IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LONE STAR TECHNOLOGICAL INNOVATIONS, LLC, PLAINTIFF,	) (	CIVIL ACTION NO. 6:19-CV-59-RWS
VS.	) (	TYLER, TEXAS
ASUSTEK COMPUTER, INC., DEFENDANT.	) (	MAY 21, 2021 8:56 A.M.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBERT W. SCHROEDER, III

UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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P R O C E E D I N G S

(Jury out.)

THE COURT: Okay. Good morning, everyone.

MR. BENNETT: Good morning, Your Honor.

THE COURT: We circulated last night copies of the final jury instructions and the verdict form. Did the parties receive those and have an opportunity to review them?

MR. BENNETT: Yes, Your Honor. Plaintiff received and had a opportunity to review.

MR. OLIVER: Yes, Your Honor.

THE COURT: Anything you wish to -- as you saw, I'm sure, we pretty much resolved everything, as I suggested we would when discussed them yesterday afternoon.

Anything anyone wishes to put on the record at this point with respect to the instructions or the form?

MR. BENNETT: We just want to lodge our formal objection to submission of invalidity defenses to the jury. We don't think the evidence has been sufficient to meet the high standard of clear and convincing evidence on either anticipation or obviousness. So we ask that they be struck for lack of sufficient evidence.

THE COURT: Okay. Mr. Oliver?

MR. OLIVER: Your Honor, Plaintiff -- or Defendant maintains its position that the form should have been in

08:57:30 the form submitted by the Defendant and objects to the
08:57:32 changes but understands that the Court -- we just want to
08:57:37 maintain our objection to that -- those changes.
08:57:38 THE COURT: Very well. Okay.
08:57:38 MR. BENNETT: And just one housekeeping item.
08:57:41 There is a page break on the Word version that we received
08:57:46 at Page 17 --
08:57:48 THE COURT: Yes, sir.
08:57:48 MR. BENNETT: -- some white space there. I don't
08:57:52 know if that was intentional or not or -- I just wanted to
08:57:56 draw it to the Court's attention.
08:57:59 THE COURT: Thank you. It was unintentional. It
08:58:01 was just an oversight. Shouldn't make any difference,
08:58:02 unless there's -- we'll confirm, but I think that
08:58:07 Paragraph 7, Section 7.1 is -- consists of just the one
08:58:10 paragraph which you've seen on Page 17.
08:58:11 MR. BENNETT: And to be clear, Plaintiff has no
08:58:13 objection to the white space. I'm just drawing it to the
08:58:16 Court's attention.
08:58:16 THE COURT: I understand. No, I appreciate you
08:58:18 pointing it out.
08:58:19 With respect to the motions for judgment as a --
08:58:23 or the motion for judgment as a matter of law, I appreciate
08:58:28 that getting filed last night, Mr. Oliver. I have had an
08:58:35 opportunity to review it, as well as the response that was

filed earlier this morning.

Does any -- either party wish to make any additional arguments with respect to that motion?

MR. BENNETT: Plaintiff will rest on its submission, Your Honor.

MR. OLIVER: Your Honor, the Defendant will rest on its submission. There is an issue in one of those motions that is going to come up in Mr. Bennett's objection to opening slides that we'll need to discuss about whether circumstantial evidence can prove more than one unit of use for a method claim.

THE COURT: Let's deal with the JMOL first and --

MR. OLIVER: Okay.

THE COURT: -- then we'll talk about objection -- objections to the slides.

MR. OLIVER: So Defendant will rest on its submissions for the JMOLs.

THE COURT: Very good. Thank you, Mr. Oliver.

Okay. You all may be seated.

As you all are well aware, when the Court considers a motion for judgment as a matter of law, I'm required to review all the evidence that is in the record drawing all reasonable inferences in favor of the non-movant.

I have to give credence to the evidence supporting

the movement that is uncontradicted and unimpeached and refrain from making any credibility determinations for waiving the evidence as those are functions of the jury.

The law requires that a JMOL should be granted when there is no legally sufficient evidentiary basis for a reasonable jury to find on an issue on which the party has been fully heard, and this usually happens in two types of situations, first where there is a complete absence of pleading or proof on an issue that is material to the claim or the defense, or in the second case where there are no controverted issues of fact on which reasonable persons could differ.

In other words, if the evidence, when it is construed in the light most favorable to the non-moving party only allows one reasonable conclusion, judgment as matter of law is proper.

If, however, reasonable minds could differ as to the import of the significance of the evidence, the JMOL should be denied and the case submitted to the jury.

Having said all that, on each issue that the parties have moved on, I am going to carry those motions for judgment as a matter of law. Obviously, depending on how the verdict turns out, the parties may file renewed motions for judgment as a matter of law under Rule 50(b), and at that point, we will be in a position to make a more

careful, considered scrutiny of the record and the transcript of testimony.

So that will be my ruling.

Any questions about that ruling?

MR. BENNETT: No, Your Honor.

MR. OLIVER: No, Your Honor. Thank you.

THE COURT: All right. Objections to demonstratives?

MR. BENNETT: Yes. If I may put one on the Elmo. This is in line with some of the arguments on the JMOLs.

We object to the use of this slide as phrased because it asserts a legal position that we think is untrue. That's just not the law.

And they use the word "entitled" to one unit of sales for each accused product. They're arguing that that's what the jury instructions -- and they're going to show a slide, and I don't mind them showing the slide and circling the language and saying this is what the instructions say, but when you then draw the conclusion and say, based on the Court's instruction, this is all Lone Star gets, and that's wrong as a matter of law, it can't be argued that way.

So if they were to change it to say, a reasonable royalty would be, something like that, or -- that's a different -- that's a different argument. That's a factual

argument, not a legal one.

So this is unduly prejudicial, confusing to the jury, the wrong legal standard. For all those reasons, we object to it.

THE COURT: Thank you, Mr. Bennett.

Who is arguing this for the Defendant?

MR. OLIVER: I am, Your Honor.

Is it possible to switch to my screen?

So, Your Honor, I'm showing here a highlighted portion of -- of -- this is Lucent v. Gateway, the Federal Circuit case that controls here. And what it says is: All that circumstantial evidence supports is the jury's implicit finding that at one person perform the patented method one time in the United States sometime during the relevant period.

Beyond that finding, all the jury had was speculation, and that's the Federal Circuit law.

I know in a JMOL motion, Plaintiff pointed to some other language in this case and was challenging the damages methodology. And what that language said was -- one of the parties had said, the Plaintiff, after somebody had used the product to infringe had to keep proving continued infringement by that person to keep getting the credit for that product. And the Court said, no -- the Federal Circuit said, no, you just have to prove that each product

has been used once to infringe, and it's an infringing product, and that can be included in the damages base.

And so here, what the slide is presenting is the Federal Circuit law as it stands and as it's clear. Circumstantial evidence permits a finding that one person has used a product to infringe in the United States in a situation where that product is not necessarily infringing.

So this goes back to the Moleculon v. CBS case that had to do with Rubik's Cube, and the Court that found in that case that instructions on how to solve a Rubik's Cube, providing those to the customers would induce them to indeed solve the Rubik's Cube because there's really only one use of a Rubik's Cube.

In this case, and in all other cases since then that I'm aware of, where the product has noninfringing use, instructions alone are not enough to get beyond one unit of sales for each product.

So, yes, circumstantial evidence can be used to find infringement. And that finding that somebody has infringed requires one unit of sales, but beyond that, the Plaintiff has the burden to prove damages by proving how many people have actually used the infringing method.

THE COURT: Anything else, Mr. Bennett?

MR. BENNETT: No, that's all.

THE COURT: Okay. I do think the slide has to be

09:06:41 removed based on my ruling on the motion for judgment as a
09:06:46 matter of law.
09:06:46 I do think you can argue that Lone Star hasn't
09:06:52 proven that the method is used. But you can't say that
09:06:56 Lone Star is limited to damages for one unit of each
09:07:00 accused product as a matter of law. Based upon my
09:07:05 determination to carry the motions, I think that's -- I
09:07:10 think that's the effect of that. So I'll ask you to remove
09:07:13 that slide.
09:07:13 MR. OLIVER: May we -- may we refer -- the jury
09:07:18 instruction explicitly says they have to prove the number
09:07:23 of people that use that.
09:07:24 THE COURT: You certainly can point to the jury
09:07:27 instructions throughout your closings.
09:07:29 MR. OLIVER: Okay. Thank you, Your Honor.
09:07:31 THE COURT: All right. Anything else that we need
09:07:33 to discuss before we have the jury brought in?
09:07:36 MR. BENNETT: They had an objection to one of our
09:07:38 slides, Your Honor.
09:07:39 THE COURT: Okay.
09:07:40 MR. OLIVER: Yes.
09:07:56 MR. BENNETT: I can put it up on the Elmo, if you
09:07:59 want, Mr. Oliver, for sake of time.
09:08:00 MR. OLIVER: That would be helpful. It takes my
09:08:02 computer -- oh, here we go. Are you able to pull up my

computer? Oh, am I not plugged in?

MR. BENNETT: Here, I got it.

MR. OLIVER: Thank you, sir.

No, it wasn't that one.

MR. BENNETT: Sorry, you're right. Well, I thought I had it.

MR. OLIVER: So, Your Honor, while he's finding the slide, basically, the slide at the top says: ASUS induced end users to infringe, and --

MR. BENNETT: There it is.

MR. OLIVER: -- and at the bottom, it refers to routine maintenance, and there was no evidence that ASUS induced routine maintenance. There's these other things, there's the user manuals, marketing, troubleshooting, which is in the user manual.

The expert witness testified that people would do routine maintenance, but that was not an instruction coming from ASUS or any type of encouragement or inducement from ASUS. So we objected to the listing of that as ASUS inducement.

THE COURT: Mr. Bennett?

MR. BENNETT: The Troubleshooting FAQ says color will become distorted at points, and our expert said, yeah, that's routine, and the industry guidance is two to 300 hours. You should recalibrate your display.

09:09:37 Circumstantial -- it's circumstantial evidence.
09:09:37 THE COURT: I'm sorry?
09:09:40 MR. BENNETT: It's circumstantial evidence of
09:09:41 inducement based -- between the expert and the manuals.
09:09:43 THE COURT: So did the expert testify that users
09:09:46 on their own can modify the colors?
09:09:48 MR. BENNETT: Yes.
09:09:49 THE COURT: Okay. I'm going to -- I'll permit the
09:09:51 slide to be used.
09:09:53 MR. OLIVER: Your Honor, on the slide that was
09:09:55 excluded, may I read it into the record to preserve it for
09:09:59 appeal?
09:09:59 THE COURT: You certainly may, or you may file it
09:10:01 on the docket, whichever you wish.
09:10:03 MR. OLIVER: If you don't mind, it's about five
09:10:06 sentences. I'll just read it into the record.
09:10:08 THE COURT: Certainly.
09:10:09 MR. OLIVER: So the slide that was excluded says:
09:10:11 So what do you do if you if you think ASUS infringes and
09:10:15 the patent is valid, question mark? See Instruction 8.9.
09:10:21 If so, Lone Star entitled to one unit of sales of each
09:10:29 accused product. 134 accused products on
09:10:34 Dr. Ducharme's chart. Mr. Perdue's only rate was 61 cents
09:10:41 per unit. 61 cents times 134 equals $81.74. Mr. Reed
09:10:57 corrected the error to 7 cents per unit. 7 cents times 134

09:11:04 equals $9.38.

09:11:09 Thank you, Your Honor.

09:11:10 THE COURT: Okay. Thank you, Mr. Oliver.

09:11:10 So let me just clarify, though, Mr. Bennett. There was only an objection to one of the sentences, is that correct, or was the entire slide objected to?

09:11:16 MR. BENNETT: It was -- so it was a combination, I guess, of elements.

09:11:20 The one sentence, "the entitled to," was the one that we principally objected to. If they remove that sentence and they left just "we think they're entitled to this under the reasonable royalty discussion," we're fine. We just don't want them telling the jury the law is something other than it is.

09:11:36 THE COURT: So, Mr. Oliver, that -- does that clarify? It's not the entire slide that's the problem. It's just the one sentence about the one unit of sales.

09:11:43 MR. OLIVER: Okay. I will take that sentence out and retain the rest of the slide.

09:11:45 THE COURT: All right.

09:11:48 MR. OLIVER: Thank you, Your Honor.

09:11:48 THE COURT: Anything else?

09:11:51 Okay. Good.

09:11:53 So it's 9:10. We'll get the jury in. I'm not sure how long it will take to read the instructions. I --

09:12:08 I am not a fan of taking a break between the parties'
09:12:14 closings. So we may take a -- depending on how long it
09:12:23 takes me to get through the instruction, we may take a very
09:12:28 short break before we come back and begin with the
09:12:31 Plaintiff's closing.
09:12:31 All right. Any questions about what we're going
09:12:37 to do?
09:12:37 MR. JOSHI: What are the instructions for counsel
09:12:38 after the jury is deliberating? We stay in the courtroom?
09:12:39 THE COURT: I'll tell you more about that. I
09:12:42 don't want you -- you don't have to stay in the courtroom,
09:12:44 Mr. Joshi, but I don't want you to get terribly far from
09:12:46 the courthouse.
09:12:47 MR. JOSHI: Okay. Thank you, Your Honor.
09:12:48 THE COURT: If you would, have the jury brought
09:12:50 in.
09:12:51 COURT SECURITY OFFICER: All rise for the jury.
09:12:53 (Jury in.)
09:13:39 THE COURT: Please be seated.
09:13:42 Good morning, ladies and gentlemen of the jury.
09:13:44 Welcome back. Hope y'all had a nice evening. Thanks for
09:13:48 being here on time. We're actually starting pretty close
09:13:51 to what I had hoped. And so we're -- we're right on
09:13:56 schedule this morning.
09:13:57 When I gave you the roadmap on Monday about what

this trial would be like, you will recall that the last thing to occur is the jury instructions that will provide information to you about the law that you must follow in your deliberations, the parties's closing arguments, and then the deliberations, so we are moving right along well.

I'm now going to go through the instructions that you must follow in your deliberations, and you're more than welcome to take notes on these instructions as I go through them, as you see fit, but I do want you to know that each of you will have a copy of these instructions for your individual use when you begin your deliberations, so feel free to make whatever notes you want to, but you'll all have a copy of this.

Depending on what time it is when I finish these instructions, we may take a short recess before we come back and begin the closing arguments.

All right. Members of the jury, you've now heard the evidence in the case, and I will instruct you on the law that you must apply. It is your duty to follow the law as I give it to you.

On the other hand, you, the jury, are the sole judges of the facts. Do not consider any statement I may have made during the trial or make in these instructions as an indication that I have any opinion about the facts of the case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and argument of the attorneys are not evidence and are not instructions on the law. They are intended only to assist you in understanding the evidence and what the parties' contentions are.

A verdict form has been prepared for you. You will take this form with you to the jury room, and when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill in, date it, and sign the form.

Answer each question on the verdict form from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

In determining whether any fact has been proven in this case, you may, unless otherwise instructed, consider the testimony of all witnesses regardless of who may have called them and all exhibits received into evidence regardless of who may have produced or introduced them.

You, the jurors, are the sole judges of the credibility of all the witnesses and the weight and effect of all the evidence.

By the Court allowing testimony or other evidence to be introduced over the objection of an attorney, the

Court did not indicate any opinion as to the weight or effect of such evidence.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence intending to prove that the witness testified falsely concerning some important fact or whether there was evidence that at some other time the witness said or did something or failed to say or do something that was different from the testimony the witness gave -- gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it because sometimes people may forget some things or remember other things inaccurately.

So if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory. And the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

In deciding whether to accept or rely upon the testimony of any witness, you may also consider any bias of the witness.

Certain testimony in the case has been presented to you through a deposition. A deposition is the sworn,

recorded answers to questions asked to a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, the witness's testimony may be presented under oath in the form of a deposition.

Before the trial, the attorneys representing the parties in the case questioned these deposition witnesses under oath. A court reporter was present and recorded the testimony.

Deposition testimony is entitled to the same consideration as testimony given by a witness in person from the witness stand. You should judge the credibility of and weigh the importance of deposition testimony to the best of your ability, just as if the witness had testified in court in person.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of

witnesses may have testified to the contrary, if after considering all of the other evidence, you believe that single witness.

The parties have stipulated or agreed to some facts in the case. And when the lawyers on both sides stipulate to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard the fact as proved.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." Direct evidence is simply evidence that the testimony -- like the testimony of an eyewitness, which if you believe it, directly proves a fact.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. As a general rule, the law makes no distinction between the weights that you should give to direct and circumstantial evidence, nor does it say that one is any better evidence than the other. It simply requires that you find the facts from all the

evidence, both direct and circumstantial, and give it the weight you believe it deserves.

Attorneys representing clients in courts such as this one have an obligation to assert objections when they believe testimony or evidence is being offered that is contrary to the rules of evidence.

The essence of a fair trial is that we conduct it pursuant to the rules of evidence and that your verdict be based only on legally admissible evidence. So you should not be influenced by any objection or by the Court's ruling on it.

If an objection was sustained, you should ignore the question. If the objection was overruled, you may treat the answer to that question just as you would treat the answer to any other question.

During the trial, I may not have let you hear the answers to some of the questions the lawyers asked. I also made it a rule you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I may have ordered you to disregard things that you saw or heard. You must completely ignore all of these things as I instructed you to disregard or ignore.

Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you're bound by your oath not to let them

influence your decision in any way.

At times during the trial it was necessary for me to talk with the lawyers at the bench outside your hearing or by calling a recess and talking to them when you were out of the courtroom. This happened because sometimes during a trial, something comes up that doesn't involve the jury, and you should shouldn't speculate on what was said during those discussions that took place outside of your presence.

Certain exhibits were shown to you as illustrations of the evidence but are not evidence themselves. We call these type of exhibits demonstrative exhibits.

Demonstrative exhibits are a party's description or picture or model to describe something that's involved in the trial. If your recollection of the evidence differs from the demonstrative exhibit, you should rely on your recollection.

When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field -- he or she is called an expert witness -- is permitted to state his or her opinion on technical matters. However, you are not required to accept that opinion.

As with any other witness, it's up to you to

09:24:09 decide whether the witness's testimony is believable or
09:24:15 not, whether it is supported by the evidence, and whether
09:24:18 to rely upon it.
09:24:19 As I did at the start of the case, I want to give
09:24:22 you a summary of each side's contentions in the case, and I
09:24:27 will then provide you with detailed instructions on what
09:24:31 each side must prove to win on each of its contentions.
09:24:36 Plaintiff, Lone Star Technical [sic] Innovations,
09:24:39 LLC, Lone Star, or the Plaintiff, seeks money damages from
09:24:42 the Defendant, ASUSTeK Computer, Inc., ASUS, or the
09:24:46 Defendant, for allegedly infringing certain claims of U.S.
09:24:52 Patent No. 6,724,435, referred to as the '435 or '435
09:24:59 patent.
09:24:59 The Plaintiff contends that certain ASUS monitors,
09:25:03 displays, and projectors infringe Claims 1 through 3, 5
09:25:07 and 6, and 13 through 15 of the '435 patent.
09:25:12 The '435 patent is also referred to as the
09:25:18 patent-in-suit, and Claims 1 through 3, 5 and 6, and 13
09:25:23 through 15 are referred to as the asserted claims.
09:25:28 Lone Star contends that ASUS has induced
09:25:33 infringement of the asserted claims of the '435 patent by
09:25:36 others, such as its customers, by making, using, selling,
09:25:41 offering for sale or importing certain monitors and
09:25:44 displays in the United States.
09:25:47 ASUS denies that it has induced infringement of

the asserted claims of the patent-in-suit. ASUS further denies that Lone Star is entitled to any damages.

ASUS also contends the asserted claims are invalid because they are anticipated or rendered obvious by the prior art.

ASUS contends that at the time of the alleged invention, prior art existed that disclosed every element of the asserted claims and made them obvious to a person of ordinary skill in the art.

ASUS further contends that the claims of the '435 patent are invalid in view of a doctrine referred to as obviousness-type double patenting.

ASUS contends that Claims 1 through 3, 5 and 6, and 13 through 15 in the '435 patent are invalid because they are an obvious variation of the claims and/or not otherwise patentably distinct from one another, earlier expiring patent having a common invention.

ASUS further contends that Claims 1 through 3, 5 and 6, and 13 through 15 of the '435 patent are invalid as they are not enabled. A claim is invalid for lack of enablement if the specification does not provide a sufficient description of the manner and process of making and using the invention that would allow one of ordinary skill in the art to make and use the claimed invention without undue experimentation.

Your job is to decide whether ASUS has infringed the asserted claims of the patent-in-suit and whether the asserted claims in the patent-in-suit are invalid.

Infringement and invalidity are separate and distinct questions and should be considered and answered separately.

If you decide that any asserted claim has been infringed and is not invalid, you will then need to decide the amount of money damages to be awarded to Lone Star to compensate them for the infringement, if any.

Facts must be proved by a required standard of evidence known as the burden of proof. You've heard about it, I'm sure, from television in criminal cases, the reference to proof beyond a reasonable doubt. That does not apply in a civil case like this.

In a civil case, a patent case like this, there are two burdens of proof that will apply.

Number one, the preponderance of the evidence standard.

And number two, the clear and convincing evidence standard.

Plaintiff, Lone Star, must prove its claims of patent infringement and damages by a preponderance of the evidence.

When a party has the burden of proof by a

preponderance of the evidence, it means that you must be persuaded that what the parties seeks to prove is more probably true than not true.

If you put the evidence for and against the party, you must prove the fact on opposite sides of the scale. The preponderance of the evidence standard requires that the scale tip at least somewhat toward the party who has the burden of proof.

ASUS has the burden of proving invalidity by clear and convincing evidence. This means evidence that produces in your mind a firm conviction or belief as to the matter at issue. Although proof to a certainty is not required, the clear and convincing standard requires a greater degree of persuasion than is necessary for the preponderance of the evidence standard.

If the proof establishes in your mind a firm belief or conviction, then the clear and convincing evidence standard has been met.

The fact that the Plaintiff brought a lawsuit in this Court seeking damages creates no inference that the Plaintiff is entitled to a judgment or damages. The act of making a claim in a lawsuit by itself does not in any way tend to establish that claim and is not evidence.

Before you can decide many of the issues in this case, you will need to understand the role of the patent

09:30:21 claims.

09:30:22 Patent claims are the numbered sentences at the
09:30:25 end of each patent, and the claims are important because it
09:30:29 is the words of the claims themselves that define what a
09:30:34 patent covers.

09:30:35 The figures and text in the rest of the patent
09:30:39 provide a description and/or examples of the invention and
09:30:45 provide a context for claims, but it is the claims that
09:30:49 defined the breadth of the patent's coverage.

09:30:54 Each claim is effectively treated as if it were a
09:30:59 separate patent, and each claim may cover more or less than
09:31:04 another claim. Therefore, what a patent covers depends
09:31:07 upon what each of its claims cover.

09:31:10 You will first need to decide -- you will first
09:31:12 need to understand what each claim covers in order to
09:31:16 decide whether or not there is infringement of the claim
09:31:19 and to decide whether or not the claim is invalid.

09:31:21 The law says that it is my role to define the
09:31:24 terms of the claims, and it's your role to apply those
09:31:28 definitions to the issues that you are asked to decide in
09:31:33 this case.

09:31:34 Therefore, as I explained to you at the very start
09:31:38 of the case, I have determined the meaning of certain claim
09:31:42 terms at issue in the case, and I have provided you those
09:31:45 depositions -- definitions in Appendix A. You must accept

09:31:52 the definitions of these words in the claims as being
09:31:54 correct.
09:31:55 It is your job to take these definitions and apply
09:31:58 them to the issues that you are deciding, including
09:32:01 infringement and validity. The claim language I have not
09:32:05 interpreted for you is to be given its ordinary and a
09:32:10 accustomed meaning as understood by one of ordinary skill
09:32:15 in the art.
09:32:15 I will now explain how a patent claim defines what
09:32:21 it covers.
09:32:22 A claim sets forth in words a set of requirements.
09:32:27 Each claim sets forth its requirements in a single
09:32:31 sentence. If a device or system satisfies each of these
09:32:35 requirements, then it is covered by the claim.
09:32:37 In patent law, the requirements of a claim are
09:32:41 often referred to as claim elements or claim limitations.
09:32:46 There can be several claims in a patent, and each
09:32:49 claim may be narrower or broader than another claim by
09:32:55 setting forth more or fewer requirements. The coverage of
09:32:59 a patent is assessed claim by claim.
09:33:03 In patent law, the requirements of a claim are
09:33:06 often referred to, as I said, as claim elements or claim
09:33:10 limitations. When a thing, such as a device, a product, or
09:33:14 a system, meets all of the requirements of the claim, the
09:33:18 claim is said to cover that thing, and that thing is said

to fall within the scope of the claim.

In other words, a claim covers a feature, product, or system where each of the claim elements or limitations is present in that device, product, or system. A claim covers such a product or system even if the product or system has additional features or components that are not covered by the claim.

Conversely, if the device, product or system meets only some but not all of the claim elements or limitations, then that device, product, or system is not covered by the claim.

By understanding the meaning of the words in a claim and by understanding that the words in a claim set forth the requirements that a product must meet in order to be covered by that claim, you will be able to understand the scope of coverage for each claim.

Once you understand what the -- what each claim covers, then you are there to decide the issues that you will be asked to decide, such as infringement and invalidity.

I will now explain to you the meaning of some of the words in the -- of the claims in this case. In doing so, I will explain some of the requirements.

As you may recall, certain of those terms have already been interpreted or defined by the Court. These

are called, sometimes, claim constructions. And as I said, these are set forth in a chart that are attached as -- that is attached as Appendix A.

You must accept my definitions of these words in the claims as correct, and you must disregard any argument or evidence presented by either party suggesting that the terms in the claim construction chart mean anything other than the definitions that are provided in the chart.

For any words in the claim for which I have not provided you with a definition, you should apply their common meaning. You should not take my definition of the language of the claim as an indication that I have a view regarding how you should decide the issues that you are being asked to decide, such as infringement and validity. These are your issues decide.

So Appendix A, the claim term is "hue," and it has been defined as (1) tint, (2) gradation or shade of a color or color component, or (3) the angle between one color or color component and the other colors or color components characterized in a particular color space.

The claim term "saturation" means (1) the intensity of a color or a color component characterized in a particular color space or (2) vividness of hue.

The claim term or phrase "individual color" means linear combination of colors or color components.

09:36:35 The claim term or phrase, "without affecting the
09:36:40 hue or the saturation of any other individual color means
09:36:45 without affecting the hue or the saturation of any other
09:36:49 individual color in the remaining plurality or of input
09:36:56 image pixels.
09:36:57 The claim term or phrase "input image pixel" means
09:37:02 input data that includes color or color component values
09:37:06 and that can be plotted in an input grid of a display
09:37:13 device.
09:37:14 And, finally, the claim term or phrase "arbitrary
09:37:18 interval of integers" means a range between two whole
09:37:25 numbers, the range including only whole numbers.
09:37:28 Now, this case involves two types of patent
09:37:33 claims, independent claims and dependent claims. An
09:37:40 independent claim sets forth all the requirements that must
09:37:43 be met in order to be covered by the claim. Thus, it is
09:37:46 not necessary to look at any other claim to determine what
09:37:50 an independent claim covers.
09:37:52 In this case, Claim 1 of the '435 is the dependent
09:37:57 [sic] claim. Other claims in the case are dependent
09:38:01 claims. A dependent claim does not itself recite all of
09:38:05 the requirements of the claim but refers to another claim
09:38:08 for some of its requirements.
09:38:10 In this case, for example, Claim 3 of the '435
09:38:17 patent depends from Claim 1. In this way, the claim

09:38:21 depends on another claim. The dependent claim incorporates
09:38:25 all of the requirements of the claims to which it refers.
09:38:29 Claim 3, for example, includes all of the
09:38:32 requirements of Claim 1 and additionally includes the
09:38:35 additional requirements set forth in Claim 3. The
09:38:40 dependent claim then adds it's own additional requirements.
09:38:44 To determine what a dependent claim covers, it's
09:38:48 necessary to look at both the dependent claim and any other
09:38:51 claims to which it refers. A feature or a product that
09:38:55 meets all of the requirements of both the dependent claim
09:38:58 and the claim to which it refers is covered by that
09:39:02 dependent claim.
09:39:04 I will now instruct you how to decide whether or
09:39:08 not ASUS has infringed the patent-in-suit.
09:39:14 Infringement occurs when a person without the
09:39:17 patent owner's permission makes, uses, offers to sell or
09:39:22 sells the patent infringement anywhere in the United States
09:39:24 or imports the patent infringement into the United States
09:39:28 while the patent is in force.
09:39:31 Infringement is assessed on a claim-by-claim
09:39:35 basis. Therefore, there may be infringement as to one
09:39:38 claim but not infringement as to another. In order to
09:39:42 prove infringement, Lone Star must prove that the
09:39:45 requirements for one or more of these types of infringement
09:39:50 are met by a preponderance of the evidence, that is,

more -- that it is more likely than not that all of the requirements of one or more of each of these types of infringement has been proved.

In this case, Lone Star's claim for patent infringement is for what is called "active inducement." Active inducement is referred to as indirect infringement. There cannot be indirect infringement without someone else engaging in direct infringement.

For ASUS to be liable, its customers must be direct infringers, either literally or under the doctrine of equivalents. To prove indirect infringement, Lone Star must also prove that ASUS's indirect infringement caused direct infringement within the United States.

Lone Star has alleged that ASUS's customers or end users directly infringe -- infringe the patent-in-suit in the United States and that ASUS is liable for actively inducing that direct infringement by its customers or end users in the United States.

For ASUS to be liable for indirect infringement, you must first find that Lone Star has proven direct infringement, either literally or under the doctrine of equivalents.

Let me start, then, by explaining direct infringement in more detail and then indirect infringement.

As I mentioned, a finding of indirect infringement

requires a showing that someone has directly infringed one of the asserted claims within the United States. Lone Star asserts that ASUS's customers directly infringed the asserted claims by using the ASUS product in an infringing manner within the United States.

However, a Plaintiff is not required to present direct evidence that any individual third-party direct infringer was actually persuaded to infringe but may instead present circumstantial evidence of inducement directed to an entire class of direct infringers.

For example, customers or end users, you must consider the question of direct infringement for its customers in determining whether or not ASUS indirectly infringes any asserted claim.

You cannot find that ASUS indirectly infringes a claim of the patent-in-suit if you do not first find that at least one of its customers directly infringes that claim by how the device operates.

To show direct infringement of a claim, Lone Star must prove by a preponderance of the evidence that ASUS's accused products practice every step in that claim. You must compare the accused product with each and every one of the requirements of the claim to determine whether all of the requirements are met.

A claim requirement or step is present if it

09:43:10 exists in the accused product or method, just as it is
09:43:14 described in the claim language, either as I have explained
09:43:18 that language to you, or if I did not explain it, as it
09:43:22 would be understood by one of ordinary skill in the art.
09:43:25 Whether ASUS's customers knew that its product or
09:43:33 method infringed does not matter for your consideration of
09:43:37 direct infringement. The customer may directly infringe a
09:43:40 patent even if it believed in good faith that what it was
09:43:45 doing was not infringement of any patent and even if it did
09:43:48 not know about the patent.
09:43:49 If you find that the accused product or system
09:43:53 includes each element of the claim, then that product or
09:43:56 system infringes the claim, even if such product or system
09:44:02 contains additional features or components that are not
09:44:05 recited in the claims.
09:44:08 If a company makes, uses, sells, offers to sell
09:44:13 within or imports into the United States a product that
09:44:16 does not meet all of the requirements under a claim and
09:44:21 thus does not literally infringe that claim, there can
09:44:25 still be direct infringement if that product satisfies that
09:44:29 claim under the doctrine of equivalents.
09:44:34 Under the doctrine of equivalents, a product
09:44:38 infringes the claim if the accused product contains
09:44:41 elements corresponding to each and every requirement of the
09:44:44 claim that is equivalent to, even though not literally met

09:44:49 by the accused product.

09:44:50 You may find that an element is equivalent to a
09:44:53 requirement of a claim that is not met literally if a
09:44:57 person having ordinary skill in the field of technology of
09:45:01 the patent would have considered the differences between
09:45:04 them to be insubstantial or would have found that the
09:45:09 structure performed substantially the same function and
09:45:13 works in substantially the same way to achieve
09:45:17 substantially the same result as the requirement of the
09:45:20 claim.

09:45:20 In order to prove infringement by equivalents,
09:45:26 Lone Star must prove the equivalence of the structure to a
09:45:32 claim element by a preponderance of the evidence.

09:45:38 Lone Star alleges that ASUS is liable for
09:45:41 infringement by actively inducing its customer to directly
09:45:46 infringe the '435 patent within the United States. As with
09:45:53 direct infringement, you must determine whether there has
09:45:56 been active inducement on a claim-by-claim basis.

09:45:59 To prove active inducement, Lone Star must
09:46:03 establish that it is more likely than not that, Number 1,
09:46:06 the acts are actually carried out by another, such as
09:46:11 ASUS's customers, and that the other directly infringes
09:46:15 that claim within the United States;

09:46:16 Number 2, that ASUS took action during the time
09:46:20 the patent was in force, intending to cause the infringing

09:46:25 acts by another;

09:46:26 And, Number 3, that ASUS was aware of the
09:46:29 patent-in-suit and knew that the acts, if taken, would
09:46:32 constitute infringement of that patent, or ASUS believed
09:46:37 that there was a high probability that the actions taken by
09:46:40 others infringed the patent-in-suit and took deliberate
09:46:47 steps to avoid learning of that infringement.

09:46:50 Although Lone Star need not prove that ASUS has
09:46:54 directly infringed, to prove indirect infringement, Lone
09:47:00 Star must prove that someone directly infringed. If there
09:47:03 is no direct infringement by anyone within the United
09:47:08 States, ASUS cannot have actively induced infringement of
09:47:12 the patent.

09:47:12 If you find that ASUS was aware of the
09:47:16 patent-in-suit but believed that the acts it encouraged did
09:47:21 not infringe that patent, ASUS cannot be liable for
09:47:25 inducement. In order to establish inducement of
09:47:28 infringement it is not sufficient that another directly
09:47:31 infringes the claims, nor is it sufficient that ASUS was
09:47:35 aware of the acts by another that allegedly constitute the
09:47:39 direct infringement.

09:47:41 Rather, in order to find inducement of
09:47:44 infringement, you must find that ASUS specifically intended
09:47:48 another to infringe the patent-in-suit. The mere fact, if
09:47:53 true, that ASUS knew or should have known that there was a

09:47:57 1 substantial risk that another's acts would infringe the
09:48:00 2 patent-in-suit would not be sufficient for active
09:48:04 3 inducement of infringement.
09:48:05 4 Like all other disputed issues in this case, this
09:48:09 5 final element of induced infringement can be proven by
09:48:14 6 circumstantial evidence.
09:48:16 7 Lone Star is not required to present hard proof of
09:48:21 8 any direct infringer. Lone Star must prove that ASUS's
09:48:27 9 actions led customers to directly infringe a claim of the
09:48:32 10 patent-in-suit within the United States. But Lone Star may
09:48:36 11 do so with circumstantial, as opposed to direct evidence.
09:48:42 12 I will now instruct you on the rules you must
09:48:46 13 follow in deciding whether or not ASUS has proven that
09:48:49 14 Claims 1 through 3, 5 and 6, and 13 through 15 of the '435
09:48:53 15 patent are invalid. Before discussing the specific rules,
09:48:58 16 I want to remind you about the standard of proof that
09:49:01 17 applies to this defense.
09:49:05 18 To prove invalidity of any patent claim, ASUS must
09:49:10 19 persuade you by clear and convincing evidence that the
09:49:13 20 claim is invalid. Patent invalidity is a defense to patent
09:49:18 21 infringement. For a patent to be valid, the invention
09:49:21 22 claimed must be new, useful, and not obvious.
09:49:25 23 A patent cannot take away from people their right
09:49:28 24 to use what was known or what would have been obvious when
09:49:32 25 the invention was made.

That which precedes the priority date of the patent, invalidates, and that which comes after, infringes. Claims are given the same meaning for the purpose of both validity and infringement.

An issued patent is accorded a presumption of validity based on the presumption that the Patent Office acted correctly in issuing a patent. Each claim of a patent is presumed valid, independently of the validity of the other claims. The presumption of validity remains intact. In other words, the burden never shifts to Lone Star to prove that its patent is valid.

Even though the Patent Office has allowed the claims of a patent, you have the ultimate responsibility for determining whether the claims of the patent are valid.

The presumption of validity is not an additional hurdle to be cleared for finding invalidity. By applying the clear and convincing standard, you are already accounting for the presumption of validity.

That which came before a patent is generally referred to as prior art. Prior art may include items that were publicly known, such as patents and printed publications, as well as products that have been used or offered for sale in this country that disclose the claimed invention or elements of the claimed invention.

To be prior art, the item or reference must have

been made, known, used, published, or patented before the priority date of the patent.

The parties agree that the priority date for the patent-in-suit is August 6th, 2001. And the effective U.S. filing date of the application of the patent is August 6th, 2001.

For a claim to be invalid because it is anticipated, ASUS must show by clear and convincing evidence that all of its requirements must have existed in a single device or method that predates the claimed invention or must have been described in a single previous publication or patent that predates the claimed invention. In patent law, these previous devices, methods, publications, or patents are called prior art references.

The description in the written reference does not have to be in the same words as the claim, but all of the requirements of the claim must be there, either stated or necessarily implied so that someone of ordinary skill in the field of digital video system design, looking at that one reference, would be able to make and use the claimed invention.

To anticipate the invention, the prior art reference or system must disclose all of the requirements of the claim, either expressly or implicitly, to a person having ordinary skill in the art in the technology of the

invention so that looking at that one prior art reference or system, the person could make and use the claimed invention.

Anticipation must be determined on a claim-by-claim basis. In determining whether a single item of prior art anticipates a patent claim, you may consider not only what is expressly disclosed in that item of prior art, but also what is inherently present or disclosed in it or inherently results from its use. Prior art inherently anticipates a patent claim if the missing requirement or feature would necessarily be present in prior art.

In order for someone to be entitled to a patent, the invention must actually be new. In general, inventions are new when the claimed invention has not been used in this country or the claimed invention was already patented or described in a printed publication anywhere in the world before the priority date of the patent.

Here is a list of the ways that ASUS can show that a patent claim is anticipated:

1. The claimed invention was already publicly known or publicly used by others in the United States before August 6, 2001;

2. If the claimed invention was already patented or described in a printed publication anywhere in the world before August 6, 2001;

If the claimed invention was already patented or described in a printed publication anywhere in the world by anyone else more than a year before the effective U.S. filing date of the application for the patent. An invention was patented by another if the other patent describes the same invention claimed by Lone Star to a person having ordinary skill in the technology;

If the claimed invention was already described in another issued U.S. patent or published U.S. Patent application that was based on a patent application filed before August 6, 2001;

5. If the claimed invention was publicly used, sold, or offered for sale in the United States more than one year before the effective U.S. filing date of the application for the patent, an invention was publicly used when it was either accessible to the public or commercially exploited.

To understand how the prior art system operates, you may rely on multiple pieces of evidence that describe a same prior art system for the purposes of finding anticipation. In other words, if you find a single prior art system existed that meets every element of the claim, then that is enough to find the claim invalid as anticipated.

ASUS also contends that the asserted claims are

invalid as obvious. Even though an invention may not have been identically disclosed or described before it was made by an inventor, in order to be patentable, the invention must also not have been obvious to a person of ordinary skill in the field of technology of the patent at the time the invention was made.

ASUS may establish that a patent claim was invalid by showing by clear and convincing evidence that the claimed invention would have been obvious to persons having ordinary skill in the art of the field of the invention at the time the invention was made.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of technology of the patent that someone would have had at the time the claimed invention was made, the scope and content of the -- a prior art and any differences between the prior art and the claimed invention.

In deciding what the level of ordinary skill in the field of the invention is, you should consider all the evidence introduced at trial, including but not limited to:

1. The levels of education and experience of the inventor and other persons actively working in the field;

2. The types of problems encountered in the field;

3. Prior art solutions to those problems;

09:57:22 4. The rapidity with which innovations are made; and

09:57:29 5. The sophistication of the technology.

09:57:31 In considering whether the claimed invention was obvious, you must first determine the scope and content of the prior art. The scope and content of -- content of prior art for deciding whether the intention -- invention was obvious includes at least prior art in the same field as the claimed invention, regardless of the problem addressed by the item or reference and prior art from different fields that a person of ordinary skill would have considered when trying to solve the problem that is addressed by the invention.

09:58:06 You should analyze whether there are any relevant differences between the prior art and the claimed invention from the view of a person of ordinary skill in the art at the time of the invention.

09:58:18 Your analysis must determine the impact, if any, of such difference on the obvious or nonobviousness of the claimed invention.

09:58:27 ASUS contends that Claims 1 through 3, 5 and 6, and 13 through 15 of the '435 patent are invalid under a doctrine known as obviousness-type double patenting.

09:58:40 This doctrine prevents one person from obtaining more than one valid patent for either, A, the same

invention, or, B, an obvious modification of the same invention.

The doctrine exists to prevent an inventor from extending the life and protection of his or her invention by securing a second later expiring patent for the same invention.

To succeed on this defense, ASUS must show by clear and convincing evidence that the claim defines an invention that is an obvious variation of or anticipated by an invention claimed in another patent or patents owned by Lone Star.

There are two steps involved in assessing whether this doctrine applies.

First, you should compare the claims of the other patent or patents with the claim of the later patent, taking into account the claim construction definitions that I have previously given you and determine whether or not there are any differences between them.

In making this comparison, you may compare one or more claims of earlier Lone Star patents with the later claims asserted in this case by Lone Star that ASUS contends are invalid.

Lone Star patents that were issued earlier than the asserted patents in this case or later issued but earlier expiring Lone Star patents can qualify as a double

patenting reference.

If you find by clear and convincing evidence that there are no differences between the claims of the earlier patent or patents and that the asserted claim -- and the asserted claim of a later patent, then the asserted claim is invalid under the doctrine of double patenting.

Second, if you find that differences exist between the claims of the earlier patent or patents and the asserted claim of a later patent, you must then determine whether any such differences rendered the claimed inventions patentably distinct.

To answer the second question, you should consider whether the claim or claims of the referenced patent renders the claim asserted in this case obvious.

Under the doctrine of double patenting, the claims in the early-filed or expiring patent or patents serve as the prior art. This analysis differs from general obviousness because you need not consider any secondary considerations of nonobviousness.

Any differences between the referenced claims and the asserted claim at issue should not be considered in isolation for purposes of determining whether the claimed inventions are patentably distinct. Rather, the claims must be considered and compared to one another as a whole.

If you find by clear and convincing evidence that

10:01:36 any differences between the claims of the earlier patent or
10:01:40 patents and the asserted claim of a later patent would have
10:01:45 been obvious or not patentably distinct to a person of
10:01:51 ordinary skill in the art than the asserted claims -- then
10:01:54 the asserted claim is invalid under the doctrine of double
10:01:58 patenting.

10:01:58 If you find that ASUS has infringed any valid
10:02:09 claim of the patent-in-suit, you must then consider what
10:02:12 amount of damages award to Lone Star. If you find that
10:02:17 ASUS has not infringed any valid claim of the patent, then
10:02:21 Lone Star is not entitled to any damages.

10:02:25 I will now instruct you about the measure of
10:02:28 damages, and by instructing you on damages, I'm not
10:02:32 suggesting which party should win on any issue.

10:02:35 Any damages you award must be adequate to
10:02:39 compensate Lone Star for any infringement you find.
10:02:42 Damages are not meant to punish an infringer or to set an
10:02:48 example. Any damages award, if you reach this issue,
10:02:52 should put Lone Star in approximately the same financial
10:02:54 position that it would have been had the infringement not
10:02:57 occurred.

10:02:58 Lone Star has the burden to establish the amount
10:03:01 of its damages by a preponderance of the evidence. The
10:03:08 Plaintiff is not required to prove its damages with
10:03:11 mathematical precision but must prove them with reasonable

10:03:15 certainty. You may not award damages that are speculative,
10:03:19 damages that are only possible, or damages that are based
10:03:22 on guesswork.
10:03:23 In this case, Lone Star seeks damages in the form
10:03:27 of a reasonable royalty. A reasonable royalty is defined
10:03:31 as the money amount Lone Star and ASUS would have agreed
10:03:35 upon as a fee for ASUS's use of the invention at the time
10:03:40 ASUS sold its first accused products.
10:03:43 The damages should be no more or no less than the
10:03:47 value of the patented invention. The patent law does not
10:03:52 allow you to use the value of an entire product or service
10:03:56 or the value of an entire market to determine damages
10:04:04 unless you find that Lone Star has proven by a
10:04:07 preponderance of the evidence that the patented feature of
10:04:09 the product drives consumer demand for the entire product
10:04:14 or service.
10:04:15 If you find that Lone Star has established
10:04:19 infringement of a valid claim, Lone Star is entitled to at
10:04:24 least a reasonable royalty to compensate them for that
10:04:29 infringement.
10:04:29 A reasonable royalty is the amount of money that a
10:04:32 willing patent owner and a willing prospective licensee
10:04:37 would have agreed upon at the time the infringement began
10:04:40 for a license to make, use, or sell the invention.
10:04:45 It is the royalty that would have resulted from an

arm's length negotiation between a willing licensor and a willing licensee. Here Lone Star as the licensor, and ASUS as the licensee, at the time that ASUS sold its first accused products.

This is known as the hypothetical negotiation. Unless like a real-world negotiation, all parts to the hypothetical negotiation are presumed to believe that the patent is both infringed and valid.

In considering this hypothetical negotiation, you should focus on what the expectations of the patent owner and the infringer would have been had they entered into an agreement at that time and had they acted reasonably in their negotiations.

The reasonable royalty you determine must be a royalty that would have resulted from the hypothetical negotiation and not simply a royalty either party would have preferred.

The date of the hypothetical negotiation between Lone Star and ASUS is the earliest date that ASUS sold in the United States one of the products that Lone Star accuses in this lawsuit of infringing the patent-in-suit.

In making your determination of the amount of a reasonable royalty, it is important that you focus on the time period when ASUS first infringed the patent-in-suit and the facts that existed at that time.

However, evidence of things that happened after the infringement first began may be considered in evaluating the reasonable royalty only to the extent that the evidence aids in asserting -- in assessing what royalties would have resulted from the hypothetical negotiation.

Your determination does not depend on the actual willingness of the parties to the lawsuit to engage in such negotiations. Your focus should be on what the party's expectations would have been had they entered into the negotiations for royalties on the date of the hypothetical negotiation.

In deciding what is a reasonable royalty that would have resulted from the hypothetical negotiation, you may consider the factors that the patent owner, Lone Star, and the alleged infringer, ASUS, would consider in setting the amount of the alleged -- in setting the amount the alleged infringer should pay.

I will now list for you a number of factors you may consider. They're as follows:

1. The royalties received by the patentee for the licensing of the patent-in-suit proving or tending to prove an established royalty;

2. The rates paid by the licensee for the use of other patents comparable to the patent-in-suit;

3. The nature and scope of the license as exclusive or non-exclusive or as restricted or nonrestricted in terms of territory or with respect to whom the manufactured product may be sold;

4. The licensor's established policy and marketing program to maintain his or her patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly;

5. The commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory, in the same line of business, or whether they are inventor and promoter;

6. The effect of selling the patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of his nonpatented items, and the extent of such derivative or conduit sales;

7. The duration of the patent and the term of the license;

8. The established profitability of the product made under the patent, its commercial success, and its current popularity;

9. The utility and advantages of the patented property over the old modes or devices, if any, that had

been used for working out similar results;

10. The nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor, and the benefit to those who would have used the invention;

11. The extent to which the infringer has made use of the invention and any evidence probative of the value of that use;

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable business to allow for the use of the invention or analogous inventions;

13. The portion of the realizable profits that should be credited to the invention as distinguished from nonpatented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer;

14. The opinion and testimony of qualified experts;

15. The amount that a licensor, such as the patentee, and a licensee, such as the infringer, would have agreed upon at the time the infringement began if both had been reasonably and voluntarily trying to reach an agreement, that is, the amount which a pursuant licensee who desired as a business proposition to obtain a license

10:11:02 to manufacture and sell a particular article embodying the
10:11:08 patented invention would have been willing to pay as a
10:11:11 royalty and yet be able to make a reasonable profit and
10:11:15 which amount would have been acceptable by a pursuant
10:11:19 patentee who was willing to grant a license.
10:11:22 The value that the patent owner gave to purchase
10:11:27 the patent may be relevant to the determination of a
10:11:32 reasonable royalty.
10:11:34 No one factor is dispositive, and you can and
10:11:39 should consider the evidence that that has been presented
10:11:42 to you in this case on each of these factors.
10:11:46 You may also consider any other factors which in
10:11:50 your mind would have increased or decreased the royalty the
10:11:55 alleged infringer would have been willing to pay and the
10:11:59 patentholder would have been willing to accept, acting as
10:12:02 normally pursuant business people.
10:12:05 In determining a reasonable royalty, you may also
10:12:07 consider whether or not a commercially acceptable
10:12:11 noninfringing alternative was available to ASUS at the time
10:12:15 of the hypothetical negotiation and whether that would have
10:12:20 affected the reasonable royalty the parties would have
10:12:23 agreed upon.
10:12:24 When determining a reasonable royalty, you may
10:12:27 consider evidence concerning the amounts that other parties
10:12:30 have paid for rights to the patent in question or for

10:12:34 rights to similar technologies. A license agreement need
10:12:39 not be perfectly comparable to a hypothetical license that
10:12:43 would have been negotiated between Lone Star and ASUS in
10:12:46 order for you to consider it.
10:12:47 However, if you choose to rely upon evidence from
10:12:51 any licensing agreements, you must account for any
10:12:56 differences between those licenses and the hypothetically
10:13:00 negotiated license between Lone Star and ASUS when you make
10:13:04 your reasonable royalty determination, including the type
10:13:08 of technology license; whether the license contained a
10:13:13 cross license or other similar patent protections; whether
10:13:16 the license contained any value related to a release of
10:13:20 liability; the date when the license was entered; the
10:13:25 financial or economic conditions of the parties at the time
10:13:28 the parties entered into the license; the extent of use, if
10:13:33 any, of any particular licensed patents; the number of
10:13:38 patents involved in the license; whether or not the license
10:13:41 covered foreign intellectual property rights; the extent to
10:13:44 which litigation may have affected the license; and whether
10:13:49 contrary to the hypothetical negotiation, the licensee in
10:13:52 the real world license at the time of entering the license
10:13:57 believed that the patents were either not infringed or were
10:14:02 invalid.
10:14:02 Licenses and settlements must not be considered
10:14:08 when determining issues of infringement or invalidity.

However, licenses and settlement agreements may be considered when considering damages. Thus, the fact that other companies have taken licenses from Lone Star or have settled litigation with Lone Star is not relevant to any issue other than damages in this case.

In determining a reasonable royalty, you may also consider evidence concerning the availability and cost of noninfringing alternatives to the patented invention. A noninfringing alternative must be an acceptable product that is licensed under the patent or that does not infringe the patent.

Damages for patent infringement must be apportioned to reflect the value the invention contributes to the accused products or features and must not include value from the accused products or features that is not attributable to the patent.

In considering the evidence of a reasonable royalty, you are not required to accept one specific figure or another for the reasonable royalty. You are entitled to determine what you consider to be a reasonable royalty based upon your consideration of all of the evidence that was presented by the parties, whether that evidence is of a specific figure or a range of figures.

A royalty may be calculated as a one-time lump-sum payment or a running royalty. A one-time lump-sum payment

that the infringer would have paid at the time of the hypothetical negotiation for a license covers all sales of the licensed product, both past and future.

This differs from payment of a running royalty because with a running royalty, the licensee pays based on the actual licensed product it sells. When a one-time lump-sum is paid, the infringer pays a single price for a license covering both past and future infringing sales.

It is up to you, based on the evidence, to decide what type of royalty, if any, is appropriate in this case for the life of the patent.

In determining the amount of damages, you should not award damages for any infringement occurring before the lawsuit was brought. The lawsuit was filed on February 20, 2019. As such, you should not award damages for any infringement occurring prior to February 20, 2019.

As noted above in discussing Lone Star's burden of proving ASUS's liability for active inducement, circumstantial evidence is sufficient for a finding of indirect infringement without requiring proof that any individual third-party direct infringer was actually persuaded to infringe.

In order to recover damages for induced infringement, Lone Star must either prove that ASUS's accused products necessarily infringe the patent-in-suit or

prove acts of direct infringement by others that were induced by ASUS. Because the amount of damages for induced infringement is limited by the number of instances of direct infringement, Lone Star must prove -- must further prove the number of direct acts of infringement of the patent-in-suit, for example, by showing individual acts of direct infringement or by showing that a particular class of product -- direct -- products directly infringes.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. Both parties expect that you will carefully and impartially consider all of the evidence, follow the law as I am now giving it to you, and reach a just verdict, regardless of the consequences.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury.

While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because others think differently or meant merely to finish the case. Remember,

10:19:18 in a very real way, you are the judges of the facts. Your
10:19:23 only interest is to seek the truth from the evidence in a
10:19:27 case. You should consider and decide this case as a
10:19:33 dispute between persons of equal standing in the community,
10:19:37 of equal worth, and holding the same or similar stations in
10:19:41 if life.
10:19:42 Corporations and businesses are entitled to the
10:19:44 same fair trial as a private individual. All persons,
10:19:50 including corporations, both foreign and domestic, stand
10:19:56 equal before the law, regardless of size or who owns them
10:20:02 or where they're located, and they are to be treated as
10:20:05 equals.
10:20:05 When you retire to the jury room to begin your
10:20:09 deliberations on your verdict, you will each have a copy of
10:20:13 this charge, and the exhibits which the Court has admitted
10:20:18 into evidence will be delivered to you.
10:20:21 The first thing you should do is to select one
10:20:25 among your number to serve as your foreperson and then
10:20:29 begin conducting your deliberations. If at any time you
10:20:34 recess during your deliberations, please follow all of the
10:20:39 instructions that I have previously given you about your
10:20:43 conduct during the trial.
10:20:45 After you have reached your verdict, your
10:20:49 foreperson will fill in on the form your answers to the
10:20:52 questions. You should not reveal your answers until such

time as the verdict is accepted and you are discharged, unless you are otherwise directed by me.

There is also a place on the verdict form for the foreperson to sign and date.

As I told you when we began the trial, any notes that you may have taken during the trial are only aids to your memory. And if your memory should differ from your notes, you should rely on your memory and not on your notes.

Your notes are not evidence, and a juror who has not taken notes should rely on his or her own independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If at any time during your deliberations you need to communicate with me, please give a written message or question to the court security officer who will bring it directly to me, and I will then respond as promptly as possible, either in writing or by having you brought back into the courtroom so that I can address you orally as I am now. I will always first disclose to the attorneys your question and my response before I answer your -- your question.

And then finally -- and I will give you further

10:22:33 instructions about this at the very conclusion -- after you
10:22:37 have reached a verdict, you're not required to talk with
10:22:40 anyone about the case unless I order otherwise.
10:22:43 All right. We have been going a little more than
10:22:47 an hour, so to avoid breaking between the parties' closing
10:22:51 arguments, we're going to go ahead and recess for a short
10:22:54 time now. And when we return, the parties will begin their
10:22:57 closing arguments.
10:22:57 So we'll be in recess about 15 minutes.
10:23:01 COURT SECURITY OFFICER: All rise for the jury.
10:23:04 (Jury out.)
10:29:19 (Recess.)
10:36:36 THE COURT: Okay. Does the Plaintiff want a
10:36:41 warning, five-minute warning, or something like that?
10:36:45 MR. BENNETT: Let's say two minutes, Your Honor.
10:36:47 THE COURT: Two minutes.
10:36:50 Defendant?
10:36:51 MR. OLIVER: No, Your Honor. I have a timer that
10:37:07 I'll look at.
10:37:08 THE COURT: Okay. Let's have the jury brought in.
10:37:12 COURT SECURITY OFFICER: All rise for the jury.
10:37:14 (Jury in.)
10:37:28 THE COURT: Please be seated.
10:37:30 Okay. At this time, ladies and gentlemen, the
10:37:33 parties will present their closing arguments to you.

10:37:35 Mr. Bennett, you may proceed.

10:37:37 MR. BENNETT: Thank you, Your Honor.

10:37:39 Ladies and gentlemen of the jury.

10:37:39 Some time ago -- I won't admit to how long ago -- I was about five -- four or five years old, I was in the grocery store with my mom. I didn't really understand property rights at that age. I knew what I wanted, and at that point I wanted a pack of gum. My mother had said no. When her back was turned, talking to the clerk, I slipped that pack of gum into my pocket, and I walked out the store with my mom. She saw the gum in my pocket, asked me why I took it. And instead of letting me take it, she took me back into the store, made me account for it, helped me understand that when you take something, even if you didn't mean to or even if you didn't know, you need to account for it.

10:38:28 And accounting for it is why we're here today. Sadly, unfortunately for Lone Star, multinational faceless corporations don't have mothers. Doesn't mean they aren't people who can hold them to account for what they do. There are those people, and today those people are you.

10:38:55 Been a long road. I think you've seen during the course of this trial the burdens that we've faced in trying to help ASUS account for its use of our property, the efforts that we've gone to to show them that we have a

10:39:11 valid U.S. patent that offers the public a valuable
10:39:17 invention that they have used to enhance their product, to
10:39:23 enhance their sales for which they owe us compensation,
10:39:28 reasonable compensation.
10:39:29 But they've fought us at every turn. They
10:39:36 wouldn't be held to account. All of that has led to this
10:39:41 moment in this courtroom right now.
10:39:43 Your Honor -- you guys -- the jury has heard a lot
10:39:50 of evidence and seen a lot of documents and heard a lot of
10:39:53 things. And that's hard to sort through sometimes, and
10:39:58 that was the purpose of this document the Court just read
10:40:02 to you and that you'll receive a copy of back in that jury
10:40:05 room. This is here to help you make sense of it all, to
10:40:10 tell you what matters, what doesn't -- you've heard a lot
10:40:15 of what doesn't -- and tell you who you should listen to
10:40:18 and to give you the principles and factors that tell you
10:40:23 who you shouldn't.
10:40:24 And it's my job the help you understand that as I
10:40:27 go through the evidence that we've discussed during this
10:40:30 week.
10:40:32 I want to start where ASUS has started at every
10:40:40 turn, at all of our witnesses, at all of their witnesses.
10:40:44 Not with infringement. They don't want to focus on
10:40:47 infringement.
10:40:47 When they took Dr. Ducharme on cross, where did

they start? Invalidity. When they took their expert on the stand on direct, where did they start? Invalidity. They don't want you to focus on infringement because they know it's not good for them.

But let's focus on invalidity.

Dallas, can you bring up -- Dallas -- Denver -- different city, I did it again -- 103A, please.

You're going to get a verdict form back in the jury room, and that verdict form on the invalidity question is going to look like this, and there's going to be a question: Has ASUS proved by clear and convincing evidence that any of the following claims of Lone Star's '435 patent are invalid? Clear and convincing evidence.

ASUS wants to adopt a policy of the best defense is a good offense. Don't look at infringement. Let's look at invalidity. Well, we're happy to look at that, and we're happy to match their burden of clear and convincing evidence, the highest civil standard, to see if they've met that burden, and they have not.

They submitted to you two invalidity defenses.

124, please.

One of them, quite frankly, is nonsensical. Double patenting. The original inventor of the '435 patent had an earlier patent, and you heard some testimony about that.

Do you remember what Mr. Oliver said in opening about double patenting, that when you try to get a double patent, it's somehow us trying to pull a fast one on the Patent Office? Remember that?

Their expert took the stand, and he talked all about invalidity and how, well, the Patent Office didn't have all the information I had. You remember when he said that on direct? Well, the truth came out on cross.

On cross-examination, Mr. Liddle took the podium and pointed out facts that ASUS never pointed out to you about double patenting. We had to do it. And the facts we pointed out were we didn't try to pull a fast on the Patent Office. We told them about the prior invention in three different places.

Next slide.

There on the very face of the patent, later on in the abstract, the same inventor present -- of the present invention, and it goes on to describe.

Knowing all of that, despite what Dr. Stevenson says, the Patent Office gave us the '435 patent. Clearly, it thought the patent was different.

And then we put on the stand Dr. Ducharme, and he followed up for all the reasons that it was different. Two different technologies, two different patents, not the same invention. Fake news.

10:43:56 107, please.

10:43:58 I won't get in all the minutia you heard about the
10:44:08 Brett reference. There's a lot of reasons. For whatever
10:44:12 reason on cross-examination, they tried to get Dr. Ducharme
10:44:15 to say it was limited to one or the other, real time video.

10:44:20 That's noise. Dr. Ducharme gave several reasons
10:44:25 why the Brett reference, the only other basis they've given
10:44:28 you for finding our patent invalid, and he gave you several
10:44:33 reasons. This was one of the most prominent ones, that the
10:44:41 saturation changes more than one color.

10:44:43 That's the focus of our invention, right? We'll
10:44:48 look at the documents that ASUS itself created showing the
10:44:51 inventions is for individual colors. This changes more
10:44:56 than one individual color.

10:45:01 We show that in the body of the patent. The
10:45:04 patent is in evidence, and you can look at it, and you
10:45:07 could remember the testimony of Dr. Ducharme about that
10:45:08 particular feature of the Brett reference. It was referred
10:45:11 to repeatedly during the trial, the prior patent, the 1998
10:45:16 patent, the film processing patent. Not the same.

10:45:21 Let me make it even easier for you. If you looked
10:45:27 at our expert and the fact that the Patent Office granted
10:45:32 us a patent, despite the existence of the Brett reference,
10:45:38 despite the existence of the prior patent, the '012, the
10:45:42 other Segman patent and you thought, well, they're about

even. ASUS has already lost because clear and convincing evidence isn't here. It's here.

Clear and convincing evidence is the standard they apply when they're going to take people's kids away. That's the standard they're applying to take away Lone Star, Mr. Rice, the patent.

Has the evidence come even close to that, clear and convincing? The evidence is neither clear, and it's certainly not convincing.

Invalidity is easy. You can go there first. It's not the first question on your form, but we're okay with it. You go right there.

103(b), please.

As to every claim -- the independent Claim 1: No.

All the way down.

Our patent is presumed valid, and it is valid because it's different. It's an innovation. It's valuable. And that's what we'll talk about next.

Go to 102(a).

That's what they didn't want to talk about. Has Lone Star proved by a preponderance of the evidence -- different standard -- that ASUS infringed any of the following claims of its U.S. Patent -- and then it lists the claims. Claim 1 -- the 15 claims that we addressed during trial.

10:47:21 Let's go to 109, please.

10:47:24 Now, look, the difficulty sometimes with patent
10:47:31 cases, it's a word salad. There's words and said patent
10:47:36 and said this and said that. The Court has given you
10:47:39 instructions about how to understand the patent definitely.
10:47:43 But the evidence is there to help you understand how ASUS
10:47:45 infringed.

10:47:46 These are the five claims reduced down to their
10:47:49 essence, the five steps of the method that Claim 1
10:47:54 provides. You have to receive and characterize the pixels,
10:47:58 and you got to select some, identify which ones are going
10:48:03 to be change, determine that, and then display them.

10:48:07 Dr. Ducharme went through all of that for every
10:48:09 claim.

10:48:09 110, please.

10:48:11 He looked at four different levels of proof.
10:48:21 He -- Plaintiff's Exhibit 26 has 135 subparts. Plaintiff's
10:48:29 Exhibit 26-1 through -135. Those are the user names.

10:48:34 Dr. Ducharme went through those. Looked at
10:48:37 several different pieces of those manuals, the menus that
10:48:41 show you can adjust saturation. Some of them, the 6-axis
10:48:45 products, it was for all six colors, the hue and
10:48:49 saturation. For the 3-axis products, it was saturation of
10:48:53 the R, G, and B.

10:48:55 Denver, go the Plaintiff's Exhibit 13.

10:49:00 We also saw internal documents from ASUS.
10:49:07 Remember this email? Chatted with Mr. Lin about it, about
10:49:15 how they incorporated that feature into their products.
10:49:20 110, please.
10:49:24 We talked about No. 2, spectrometer testing. That
10:49:37 was the -- the slide where --
10:49:43 123, Denver, please.
10:49:45 That -- that test with all the colors, he attached
10:49:49 that high-powered camera through the monitors and ran those
10:49:57 tests. Gave you the feedback. And every time where it
10:50:00 said "pass," that means it failed, meaning it infringed the
10:50:03 patent.
10:50:04 Dr. Ducharme showed you real test results. Found
10:50:06 infringement, yet another basis for finding infringement.
10:50:10 Go back to 110, please.
10:50:13 Source code analysis. We asked for the source
10:50:23 code. The testimony showed you the product maker. We
10:50:27 don't have it, they said. This is where you can get it.
10:50:31 So we subpoenaed the source code from MediaTek.
10:50:34 Dr. Ducharme looked at it, reviewed the code, found
10:50:39 elements of the code that showed infringement in 6-axis
10:50:43 products and 3-axis products because of their similarities.
10:50:49 Infringement, yet another basis. And then in live
10:50:53 open court, we turned on the monitor. Dr. Ducharme came
10:50:58 over with the camera pointed right at it so all of you

could see it quite easily, larger than life, and he adjusted the colors.

Now, I'm going to pause here and address one issue that needs addressing.

During opening statement, Mr. Oliver made a statement --

105(a), please.

This is what he said. As we listened to the testimony, as we listened to Dr. Ducharme, who tested only a couple of colors, he's not going to be able to tell you what actually happened.

Wrong. He did. He showed you four different ways.

There's this last sentence. He has to show you that you can change red without changing any other colors.

And then he brought up the monitor right here that I couldn't see, with no camera like we ran, and they tried to prove infringement -- noninfringement to you in opening statement with no context and nothing else.

Well, as it turns out and as you were later instructed by the Court and as you've been instructed again in the current charge, that last sentence was wrong.

Based on that term that you heard about from the Court, preferred embodiment -- I don't have a lot of time. I wish I could explain it in-depth. But as best as I can

10:52:34 explain it, when you have a patent and you get it on a --
10:52:37 let's say it's a combustion engine, and you patent it under
10:52:42 one preferred embodiment where the pistons are in the shape
10:52:47 of a V. It's not limited to that shape. You can come
10:52:51 along later and somebody has an H-block engine, it can
10:52:55 still infringe. Just because the preferred embodiment said
10:53:00 "V" doesn't mean it's limited to that.
10:53:02 Well, that's what they tried to tell you when they
10:53:05 brought up all that R inequality nonsense that took the
10:53:12 Court to come instruct you about what was real. And they
10:53:15 did that in opening. That should tell you something.
10:53:20 And we got Dr. Ducharme on the stand to set things
10:53:24 right. What they showed you was wrong.
10:53:31 Dr. Ducharme set you right. He adjusted the red.
10:53:34 The only thing that changed was red on the 3-axis. Yes,
10:53:39 magenta changed, but that was exactly what Dr. Ducharme
10:53:42 said would happen, and it's exactly consistent with the
10:53:45 claims in the patent.
10:53:46 Claim 1, all the way through. We'll talk about
10:53:48 the dependent claims in a second.
10:53:50 122, please.
10:53:53 That was the test we ran. On the 6-axis monitor,
10:53:58 you'll remember, he talked about the brain and how it can
10:54:03 select each individual color. If you want to adjust just
10:54:06 magenta, it'll adjust magenta. That's the patent. You saw

10:54:16 that with your own eyes in open court. No backs to anyone.
10:54:18 The Court saw it. Everyone saw it. Infringement.
10:54:21 Infringement.
10:54:30 Now, we have to show an extra step to prove
10:54:34 infringement --
10:54:34 130, please.
10:54:34 -- and that's induced infringement. Because ASUS
10:54:37 is not in the United States and because we have to prove
10:54:40 infringement in the United States, we have an extra step,
10:54:45 and we've met that extra step. The Court just instructed
10:54:49 you about what inducement means. It means that ASUS has to
10:54:53 take action to show you -- there's three -- three
10:55:00 requirements in the charge to show infringement.
10:55:13 The act's actually carried out by another, such as
10:55:16 ASUS customers. ASUS took action during the time the
10:55:16 patent was in force, right now, intending to cause the
10:55:16 infringing acts by another. And ASUS was aware of the
10:55:26 patent-in-suit and knew that the acts, if taken, would
10:55:29 constitute infringement.
10:55:30 I'll start there. You heard Mr. Rice on the
10:55:32 stand. He said, the reason we sue companies like ASUS is
10:55:35 because they ignore us. So that's why we sued them. And
10:55:39 when we is sued them, they knew about the patent, yet they
10:55:44 kept selling the products without authorization and without
10:55:48 taking a license.

10:55:49 THE COURT: Mr. Bennett, you have used 18 minutes.

10:55:52 MR. BENNETT: Thank you. Did they take action during the time the patent was in force? Yes, you've seen the user manual.

10:55:59 Denver, let's look at 14-A one more time.

10:56:12 If I had a dime for every time we saw this document during trial, I probably could buy an ASUS monitor.

10:56:19 This is direct evidence of infringement. This invokes the very language of the very patent we're here about. They infringe.

10:56:29 Wrap it up -- or last slide, Denver, please.

10:56:33 So we looked at marketing materials, looked at troubleshooting solutions. I will not go through all of those troubleshooting facts that I went through with Mr. Alvin Lin. It was painful. I had to drag every answer out of him. I had to cross-examine him on whether it was a genuine ASUS document, until his lawyer got up and showed him documents we produced, and he was a book of wisdom. And I'll get back to that.

10:57:06 Then we had Dr. Ducharme testify about how the troubleshooting solutions reflect industry standards, which are every two to 300 hours, users will recalibrate their monitors. That's inducement. ASUS knew it's sending it to its customers, it's advertising the feature, it knows the

10:57:23 feature is valuable. And you know how you know that? From
10:57:27 ASUS's own lawyer.
10:57:30 Go to 108, please.
10:57:39 This is during cross-examination or attempted
10:57:42 cross-examination of our damages expert.
10:57:43 They asked him: Isn't it pretty common that if a
10:57:48 company has a feature that's important, they advertise it?
10:57:53 ASUS knew the feature was there and that people
10:57:54 would use it here. They wanted people to. That's induced
10:57:58 infringement.
10:57:59 So I don't have time to go into every claim. You
10:58:02 heard the testimony from Dr. Ducharme who confirmed that
10:58:05 their products, 3-axis/6-axis infringe every claim listed
10:58:11 in the first question.
10:58:13 Denver, 102(b), please.
10:58:17 When you get back to that jury room, first
10:58:21 question, you answer yes all they way down, because they
10:58:22 did. That's why they don't want you to look at it.
10:58:25 Dr. Ducharme confirmed every claim.
10:58:27 On the last question, damages. We haven't come
10:58:31 here can asking for a billion dollars. We've come here
10:58:34 asking for 57 cents, two quarters, a nickel, and two
10:58:40 pennies from a $1,400 monitor.
10:58:43 Our expert went through the analysis, he took you
10:58:46 every step of the way through all the analytics, and showed

you.

104.

So what sum of money if paid now do you find by a preponderance of the evidence would fairly and reasonably compensate Lone Star?

2.8. 2.8. A reasonable royalty.

A penny more would be a windfall for us. A penny more would be a windfall to them. We're just -- a penny less would be a windfall to them. We're just asking for what the reasonable value of the technology is, a one-time lump-sum payment. Thank you.

THE COURT: Thank you, Mr. Bennett.

Mr. Oliver.

MR. OLIVER: Your Honor, I'm going to try the lapel mic for the first time. If you can't hear me, please let me know.

Ladies and gentlemen of the jury, thank you for being here. Thank you for your service. I'm not the type to get up and, you know, yell and wave my arms and get all excited about this. I don't think passion is what one needs to prove a patent case, a patent infringement case, a patent invalidity case. I think what we need to see is what is in the patent, what is in the products -- excuse me, not what somebody can make a lot of noise about.

I'm going to correct one thing that the

11:00:23 Plaintiff's counsel said. He put up a slide, and he
11:00:27 crossed out something I said in opening statement. And he
11:00:29 said: You heard from the Court that -- that ASUS was
11:00:32 wrong. I don't think that's what the Court said. The
11:00:34 Court was talking about a different thing during a
11:00:39 different part of the presentation.
11:00:42 I was going to get right into my presentation on
11:00:46 the merits of the case and on what the evidence shows. I
11:00:52 notice there has been a lot of hand waving and it kind of
11:00:58 reminded me of my wife's favorite movie, which I also enjoy
11:01:03 quite a bit, the Wizard of Oz. Have these people set up on
11:01:08 this journey to see this fantastic wizard, and they get
11:01:12 there and the dog pulls back the curtain and then the
11:01:16 wizard says, you know, please don't pay attention to the
11:01:20 man behind the curtain. And I'm viewing what we're doing
11:01:24 as kind of the dog pulling back the curtain.
11:01:27 You see their expert saying used magic to get to
11:01:31 the numbers. We see Mr. Bennett here saying you don't have
11:01:34 to look at the product, just look at the screen, look at
11:01:37 what -- you know, look at the website, look at an email,
11:01:41 and so on. But we should look at the product.
11:01:44 But first, I want to reiterate -- you now have a
11:01:49 package of instructions and it took a long time to read and
11:01:52 by the time I got to the one that I want you to think about
11:01:55 the most, I was nodding off. I listen to these things

regularly, so I can imagine you were probably not completely -- not completely focused on it, but -- if you're like me.

But Instruction 8.9, it's near the end. It's on Page 30. If you don't remember anything else when you leave here, remember to look at Instruction 8.9. And what it says is: Lone Star can use circumstantial evidence to prove indirect infringement. That's assuming they prove the technical -- all the technical pieces are there. They can use circumstantial evidence, like a user's manual and kind of saying somebody got this user's manual so somebody must have read it and done something. They can use that to find indirect infringement.

But what they have to do, then, in the second part of 8.9 -- read it closely. The amount of damages for induced infringement is limited by the number of instances of direct infringement. So in a case like we have here where these products that you have seen can be used their entire lifetime without ever infringing, right? We're talking about one little feature in one menu that somebody would have to select.

Use your common sense. Use the evidence you've heard. I know I've used monitors for about 20 years, and I've never even touched that menu until I started working on this case.

11:03:39 MR. BENNETT: Objection, Your Honor. That's outside the evidence.

11:03:41 THE COURT: Well, let's get back to the evidence --

11:03:43 MR. OLIVER: Okay.

11:03:43 THE COURT: -- Mr. Oliver.

11:03:44 MR. OLIVER: Use the evidence -- use the evidence and use Instruction 8.9, okay?

11:03:52 And the amount of damages -- the amount of money they get is limited by the number of instances of direct infringement.

11:04:00 Well, what are the number of instances of direct infringement? Lone Star must prove -- further prove the number of acts of direct infringement. They must prove the number of acts of direct infringement.

11:04:13 Sending -- you remember when I did the opening statement, I put a picture of a gun up, and I said: Having a gun is not murdering someone, or somebody could use a gun to an illegal act, but most people don't. That was the point of that argument or that discussion. You have to prove the number of acts of direct infringement. They have to show you actual people that did this before they can get damages for it.

11:04:49 How do they do that? They go out and do a survey of users. You know, they poll people. They actually go

out and observe people. You know, sometimes in these methods, you can observe people using them. This would be a little tough to observe, but -- send out emails to a whole bunch of customers and say, you know, we'll pay you a dollar to respond to this or do it for free or whatever.

They have to prove -- in Instruction 8.9, they have to prove the number of people that did it. Without that number, you can't award damages for this induced infringement, and there's no number here. Keep that in mind when you go back.

I'm going to turn back to the rest of my presentation. Quite obviously, ASUS would like you to enter the opposite answers in the verdict form than what Mr. Bennett said.

Is there infringement? No. I'll explain that one in a couple of minutes.

Is there invalidity? Yes. I'll review that in a couple of minutes.

Should there be damages? No.

Now, one of the reasons the patent is invalid is the Brett patent. And you will have it. It's Exhibit 9. I've got an excerpt from it up there. You can see when you pull it up, it's a pretty thick document.

The Brett patent has an issue date that's multiple years before the filing date of the Lone Star patent. And

11:06:34 the Brett patent was discussed at length during the trial.

11:06:40 Dr. Stevenson, yesterday, went through -- he went

11:06:43 through each step of the -- of the patent -- the Lone Star

11:06:48 patent, and he went through Brett and showed you where in

11:06:52 Brett each element was found.

11:06:55 And do you remember Lone Star's expert's one

11:07:02 complaint about Brett? His complaint about Brett was what?

11:07:07 The main difference is the Brett patent doesn't deal with

11:07:07 real time digital video. It doesn't disclose real time

11:07:07 digital video. The Brett patent does not discuss real time

11:07:07 digital video.

11:07:20 These quotes I have up here are from the

11:07:24 transcript that's been recorded.

11:07:26 (As read): Does Brett discuss real time video?

11:07:29 No.

11:07:29 There's no real time digital video component in

11:07:32 Brett. This patent has nothing to do with real time

11:07:36 digital video.

11:07:37 One of the instructions says you need to consider

11:07:40 the credibility of the witnesses that are testifying. You

11:07:43 are the ones that weigh whether they're credible. So we've

11:07:48 seen this one five times, no real time video, no real time

11:07:54 digital video, no real time -- nothing to do with real time

11:07:56 digital video.

11:07:58 Let's look at Brett. It doesn't disclose real

11:08:02 time digital video. I'm going to blow this up. This is
11:08:05 front page of Brett, a digital video processing system.
11:08:08 Oh, well, it's not real time digital video.
11:08:12 Let's look -- this is -- again, it's DX-9. This
11:08:15 is an excerpt from within the patent that Dr. Stevenson
11:08:18 showed you: At present, such an embodiment provides a cost
11:08:25 effective solution for processing digital video images in
11:08:29 real time, i.e., at the rate a video is seen on television
11:08:35 screen. That's real time, right? It processes it fast
11:08:39 enough to play it back without a delay. Doesn't disclose
11:08:43 real time video. What patent was he reading?
11:08:50 Here's Brett. Here's where -- we spent an hour or
11:08:55 more going through. And you heard about the standard of
11:09:03 clear and convincing evidence. Lone Star's expert waved
11:09:10 his hand and said there's no -- there's no real time
11:09:12 digital video here. Said it six times. That was his
11:09:16 argument about why Brett doesn't invalidate this patent.
11:09:20 On cross-examination somebody asked
11:09:25 Dr. Ducharme -- or Dr. Stevenson, look at all this stuff.
11:09:31 You know, this is some giant thing. How could that go into
11:09:34 one of these monitors? How could that be -- and what he
11:09:38 did is: He said that could go on an ASIC. And he said it
11:09:44 could go on a chip. And that's what Lone Star has been
11:09:47 calling the brains of these monitors. This looks big, but
11:09:51 this is all microcircuits that can fit on a chip and go

11:09:55 into a monitor easily.

11:09:58 I wanted to just walk through it real quickly. I
11:10:11 don't have a ton of time. I'm going to go through it a lot
11:10:15 quicker than they did.

11:10:17 The patent receiving and characterizing the input
11:10:21 image pixels. Does it have pixels? Lone Star's expert
11:10:24 says it just takes in video from films. There's a pixel
11:10:28 counter. Pixel numbers, right? It's coming in with
11:10:34 pixels, selecting to change the hue -- independently change
11:10:38 the hue or saturation. Now, keep in mind that term
11:10:41 "independently." I'm going to talk -- when I talk about
11:10:45 noninfringement, I'm going to talk about that.

11:10:47 But it selects -- remember, they had to go to the
11:10:50 control -- the control screen. I don't have that in my
11:10:53 presentation here today, but they went to the control
11:10:56 screen in Brett and showed you what the selection was and
11:11:01 selected a hue control delta value, right?

11:11:07 So you've got hue. You've got a change. That's a
11:11:11 plus sign. You can select the saturation control delta
11:11:15 value. Here's where saturation is. That's multiplication.
11:11:19 That's another way to change it.

11:11:27 So identified the pixels. They have the color you
11:11:30 want to change. And you use the logic, right? It's
11:11:36 talking about a look-up table. That will be a little bit
11:11:39 important a little bit later.

But the logic comes down, and this is what you want to change. You do the changes, and it says you get to -- you get to a change in red, green, or blue or all of them, right? You come back up, add back in and change -- change your digital output.

I'm not as elegant as he was. He actually went through and was able to explain every step.

And then the final step, displaying, right? Where does the output go? There was a couple of images he showed you in Brett where it went to an HDTV. So Brett does clearly show what's in the '435 patent.

What about the other invalidity position that Lone Star has -- or that ASUS has brought you?

Oh, one other point about Brett. When you look at that exhibit, DX 9, you can look at the front of the Lone Star patent, and you won't see it there. The Patent Office never found this when it was searching for relevant stuff. And that happens. The Patent Office does a really good job, but they're not perfect. And that's why the instructions you have here on validity say: Even though the Patent Office has allowed the claims of the patents, you have the ultimate responsibility for deciding whether they're valid.

They come invalid. If we show you something that invalidates them, they're invalid.

11:13:22 The other thing we were talking about is double
11:13:26 patenting. You have an instruction on double patenting
11:13:32 at 7.5 that tells you a few things. You know, 7.5 -- I'll
11:13:37 paraphrase a little. I want you to read the exact language
11:13:40 when you think about this. Prevents one person from
11:13:43 getting more than one patent for the same thing. One
11:13:46 person, Yosef Segman, Yosef Segman. It's even the same
11:13:48 company, Oplus, Oplus.
11:13:50 The doctrine exists to prevent an inventor from
11:13:56 extending the life of protection of his or her invention by
11:13:59 securing a second later expiring patent on the same
11:14:03 invention, right? So he got the '012 patent first, filed
11:14:08 it in 1999, got the patent in 2000.
11:14:12 Then two years later, he filed the patent we're
11:14:16 talking about in this lawsuit, and he got that patent
11:14:19 issued four years later, right? A second later expiring
11:14:25 patent. So the patent term is measured from the -- from
11:14:29 the filing date, expires 2019, March. This one expires
11:14:40 2021, but they actually added time on to it.
11:14:44 We were talking about the '012 patent here. It
11:14:48 would have expired before Lone Star, like a week after Lone
11:14:53 Star sued ASUS. That's why we're talking about the other
11:14:57 patent.
11:14:58 I'm not going to go into all the details of that.
11:15:01 But, again, Dr. Stevenson worked through it. He worked

11:15:05 through the claims. He said: Look at the claims of this
11:15:07 patent and apply them to the other. They have the same
11:15:09 thing. They use different language, but when you look at
11:15:12 it from the vantage point of somebody who knows this, they
11:15:20 are the same thing, even though they use slightly different
11:15:23 terms.
11:15:24 So what was Lone Star's expert's one criticism of
11:15:29 the '012 patent? The '012 patent uses look-up tables. The
11:15:33 '435 patent uses arithmetic and logical operations. Lookup
11:15:44 tables are logical operations. Something comes in, and it
11:15:48 chooses something that goes out. That's a logical
11:15:51 operation.
11:15:51 Well, right here, this is another quote from Lone
11:15:53 Star's expert. He says: It's an array of numbers.
11:16:01 I'm going to skip a little.
11:16:03 We call it an LUT. It's a look-up table. So
11:16:07 LUT -- keep that in mind -- it's an abbreviation for
11:16:09 look-up table. You look in the table to see what the new
11:16:12 value should be. That's logic. That's using logic,
11:16:15 computer logic.
11:16:17 So then my colleague, Mr. Joshi, cross-examined
11:16:23 him, and he said -- at that point, Lone Star's expert, you
11:16:29 will remember, was talking about how ASUS infringes, right?
11:16:35 And he said: The ASUS device achieves substantially
11:16:38 similar results using insubstantially different operations.

11:16:43 So there's nothing substantially different about them,
11:16:46 okay?
11:16:47 And what he does is he goes down here, and he
11:16:49 says -- so even if the accused -- even if the ASUS products
11:16:54 use a matrix or, what, an LUT, it'll still be the same
11:17:00 thing.
11:17:00 So essentially what he was saying is the '435
11:17:09 patent does cover LUTs. And when Mr. Joshi read his report
11:17:13 to him, and he said: Did I read that correctly?
11:17:16 And he said: Yes, you did.
11:17:19 So the ASUS products use LUTs -- or he said even
11:17:23 if they do, that's the same thing. And his only complaint
11:17:27 about why the two patents were different was the earlier
11:17:30 one uses look-up tables.
11:17:32 If they're the same, how can they be different?
11:17:39 He wants them to be the same for ASUS for infringement but
11:17:40 different for invalidity.
11:17:42 Let's talk about noninfringement.
11:17:46 I heard from Lone Star's counsel that I didn't
11:17:51 say -- we never said anything about noninfringement.
11:17:55 We actually could have just sat here on
11:17:57 infringement and let them put in everything they had and
11:17:59 not brought in an expert or anything, and they wouldn't
11:18:03 have been able to prove infringement.
11:18:06 We saw a lot of this, right? At the beginning of

11:18:14 the case, I said, pay attention to the menus. The menus
11:18:18 are important. Pay close attention.
11:18:20 I picked this guy up, and I showed it to you.
11:18:23 Because at the beginning of trial when we sat down, this
11:18:25 was accused of infringement. As we stand here today, it's
11:18:28 not, because the menus were too inconvenient for Lone Star.
11:18:41 Look at this menu. It says in the user mode, red,
11:18:47 green, or blue are adjustable 0 to 100. We've seen that
11:18:53 100 times this week, right?
11:18:55 But that's talk about that same mode that we just
11:18:55 -- I'm going to go back one if I can. User mode, red,
11:18:59 green and blue, right? In the user mode, red, green, and
11:19:03 blue, they're configurable.
11:19:05 So they ask Mr. Lin: What is being adjusted?
11:19:09 He says: What's being adjusted, that's to adjust
11:19:12 the value of gain.
11:19:14 In English, it's a word -- and he spelled it out,
11:19:18 g-a-i-n. I guess he knows how -- Professor Lin obviously
11:19:20 could read certain English words. He probably has to read
11:19:24 a lot of technical documents.
11:19:26 And then what did he go on to say?
11:19:27 Is gain the same or different from hue or
11:19:30 saturation?
11:19:30 They're different.
11:19:32 Now, Mr. -- Dr. Stevenson also testified that

they're different than just hue or just saturation.

And Dr. Ducharme came up here and said: Gain is the same. When I adjust the gain, it's the same.

But remember what I said about the patent. When you look at the language of the claim, it says: You select to independently control hue or saturation.

Now, gain, as we saw from some the demonstrations, affected how bright a color was, not just how saturated it was. So it affected both saturation and the brightness at the same time. It was not independently controlling saturation.

The patent talks about independently controlling hue or saturation. When you look at it -- at the terms, I know you've probably seen them way too many times. It's a long claim, but look for that, independently controlling hue or saturation.

Gain might hit one of saturation or hue. He said it hit saturation. It might hit saturation, but it also hits brightness at the same time. It's not independent.

There's a bunch of other products where we don't see any evidence that they have that red from 1 to 100 control, right?

If we go back -- I'm going to go back a couple slides to the -- to the product we just looked at. You see red is capable of adjusting from 1 to 100 in user mode.

11:21:14 This product has a different configuration, and there's no
11:21:19 evidence that red or -- red, green, or blue can be adjusted
11:21:23 from 1 to 100. There's a saturation, but this is the thing
11:21:27 that they showed you in the first opening statement was
11:21:30 overall screen saturation. It doesn't matter for this
11:21:32 case. Brightness or contrast, those aren't part of the hue
11:21:36 or saturation.

11:21:36 So there's one, two, three, four, five, six,
11:21:41 seven, eight, nine, ten -- about ten of the products that
11:21:46 they accused that don't have -- (audio drop).

11:21:53 You remember when we went over some slides and we
11:21:54 changed the colors, and Dr. Ducharme said they all -- they
11:21:57 would -- you know, things would change when you adjusted
11:21:59 red or blue or green up and down? This patent talks about
11:22:04 an individual color, and the Court has said that's a linear
11:22:07 combination of colors or color components. And you heard
11:22:09 the experts say what that means. It's a combination of
11:22:13 red, green, or blue, okay? It's -- that's the combination.
11:22:17 That's the individual color.

11:22:22 Here's some more, these happen to all be the same.
11:22:27 When they're -- when they're all equal, you get shades of
11:22:30 gray and white. And if you take it all the way down to
11:22:33 zero, you get pure black. And these are also linear
11:22:39 combinations, those three units.

11:22:42 So when you -- when you look at the patent claim,

11:22:51 the patent claim says -- run back here to individual color.
11:22:58 I don't have a blowup -- selecting to independently change
11:23:03 the hue or the saturation in the individual color. Okay.
11:23:07 I'm not going to read all the other language. But
11:23:12 selecting to change the hue or saturation of an individual
11:23:12 color.

11:23:16 If you go to the next set -- the next thing,
11:23:18 identifying a plurality of said input image pixels, the
11:23:24 incoming data, having said individual color. We just
11:23:28 selected to change it. Now we're identifying it.

11:23:31 And let's go down to the very end of the claim.

11:23:35 It says, when you make this change, when you
11:23:39 change all the -- all the pixels you've selected and
11:23:43 identify, whereby the hue or the saturation of said
11:23:48 individual color in the real time digital video input image
11:23:55 has been changed -- last clause of the claim, very
11:23:58 important -- without affecting the hue or saturation of any
11:24:02 other individual color. Didn't have to present a piece of
11:24:05 evidence for you -- for you to be able to look at the claim
11:24:08 and the claim construction to know what happened.

11:24:13 You decide whether a product is even selecting an
11:24:21 individual color based on that definition, linear
11:24:25 combination. You ever see him select an individual
11:24:29 color -- a linear combination of components? When did you
11:24:35 ever see him do the identifying and the modifying step

without affecting the hue or saturation of any other individual color? No, you didn't see that. You make the decision.

Now, we talked a little bit about source code, right? There was a lot of -- there was a lot of discussion about source code. We showed you source code. There was a slide related to source code that they put up that had a product number on it. You could -- you heard the product number MST8556T.

When you get to source code, look at the top of it in the back. A collection of source codes, it's got product numbers on the top. A collection of different chunks of code from different products.

Dr. Ducharme said, oh, well, I keep code for different products in the same directory. Big multinational company like MediaTek who sells these chips must do that.

Think about that. This company has thousand of chips, MediaTek. And MediaTek has probably thousands or tens of thousands of engineers, and they're just kind of throwing their code wherever. These companies have organization for their code.

Let's talk about a couple other things. I'm going to have to jump forward real fast because I only have a few minutes left to talk to you.

11:26:11 If I don't get a chance at the end, thank you for
11:26:14 doing this. Thank you for listening. Thank you for paying
11:26:17 attention.
11:26:17 Both the 6-axis and 3-axis products don't have a
11:26:22 delta value. What does that mean? When you saw the menus,
11:26:24 they went from 1 to 100. What you picked was called an
11:26:30 absolute value. You picked 51, you picked 55, you picked
11:26:34 100 or something, the experts were doing it.
11:26:38 The delta doesn't change. So to pick a delta
11:26:41 value, you'd pick the change. You'd say I'm at 55. I'm
11:26:44 going to somehow select 5, and it's going to jump to 55.
11:26:49 The delta between 10 and 15 is 5, right? 15 minus 10 is 5.
11:26:53 Hundred minus 52 is 48. Those are delta values. But what
11:26:58 you are picking is an absolute value. They're missing the
11:27:03 delta value selection that's in the claim. That's another
11:27:05 reason why ASUS doesn't infringe.
11:27:06 And Dr. Stevenson testified there's no
11:27:08 identification of pixels. There's an identifying step in
11:27:11 the patent. Everything has changed. Pixels aren't
11:27:15 identified. It's just you shoot it in with a firehose, it
11:27:19 gets changed. The patent requires identifying pixels that
11:27:23 had that individual color. Read the language and apply it,
11:27:28 and you'll find there's no infringement.
11:27:34 Let's talk quickly about money.
11:27:36 You saw this slide at the beginning. Here's a

problem. 2.8 million they're asking for, remember they said 134 products were accused. They can't get money for products that are not accused of infringement, but what did the -- what did Mr. Perdue include in his chart? 320 products. These are all the ones I struck out. We kind of went over it earlier. So there's more unaccused products than accused products in their damages numbers.

And what did he want you to do? He wanted you to go back and figure it out. He made his report in September. Mr. Reed told him in October there was an error. Seven months later, he never fixed it. Get to trial, and he says, the jury can go figure it out. They can figure out how to take out those numbers.

Let's look at damages. Section 8 in your instructions. Lone Star has the burden to establish the amount of damages. The last sentence in this paragraph I have circled says: You may not award damages that are speculative or damages that are based on guesswork.

What do you do with this? I wish you didn't have to decide it. You're going to have to decide what to do when somebody includes more than twice as many products than the damages that are -- than are accused of infringement.

But I think you saw enough in what I showed you on the infringement to know that when you look at the claim

11:29:12 language and compare the flashy demonstrations you saw by
11:29:16 Lone Star, the claims of the patent are not met by the ASUS
11:29:20 products. That's why ASUS is fighting. It's not because
11:29:24 ASUS is trying to steal anything.
11:29:31 Mr. Perdue said give them 61 cents per unit. That
11:29:36 was based on a miscalculation.
11:29:38 Mr. Reed corrected and said, you know, at most,
11:29:41 it's about 7 cents per unit.
11:29:43 It got to a lump-sum -- let's talk about another
11:29:47 case. Mr. Perdue said Barco owed 1.13 million. Barco paid
11:29:52 a tenth of that. Mr. Reed adjusted Mr. Perdue's damages,
11:29:57 and he said if every single product infringes, 219,000, if
11:30:05 every single thing infringes, but remember --
11:30:08 THE COURT: Mr. Oliver, your time has expired.
11:30:10 MR. OLIVER: Okay. Go to the last slide which
11:30:14 just says --
11:30:21 THE COURT: Mr. Oliver?
11:30:24 MR. OLIVER: Thank you. Sorry.
11:30:28 MR. BENNETT: I guess I'm used to the ad hominem
11:30:31 attacks on me. I'm fine with it. I have no feelings. The
11:30:35 hand-waving, the references to Wizard of Oz. I do get a
11:30:40 little tired of the jabs at my client, our invention. I
11:30:44 don't know if you heard Mr. Oliver's one-little-feature
11:30:49 comment.
11:30:49 Our witnesses, he, again, with no basis accuses

11:30:53 Glenn Perdue of the magic after he repeatedly said that's
11:30:56 not what he was talking about. He was talking about
11:30:59 Georgia-Pacific. That's what we've been dealing with the
11:31:02 last two years, ladies and gentlemen of the jury.
11:31:08 I hope you noticed the order of his argument. He
11:31:10 started with damages. Don't give them too much.
11:31:14 Then he went right to invalidity. It's invalid.
11:31:19 And only -- I don't know, I was watching my watch,
11:31:23 I stopped watching about 15 minutes, did he get to
11:31:27 infringement? And he didn't spend very much time there.
11:31:31 He went right to look at Mr. Brett. Don't give him too
11:31:37 much.
11:31:38 I think it's clear by now what's going on. I
11:31:40 think it's clear by now what ASUS knows, that they
11:31:44 infringed, and they really, really, really want you to find
11:31:48 those patents invalid so that you don't hold them liable
11:31:52 for patent infringement.
11:31:53 Here's the problem. They put on witnesses, and
11:31:59 they gave you one who was credible. One.
11:32:05 It wasn't Mr. Lin.
11:32:10 Denver, would you go to ID No. 127?
11:32:25 Remember this? Right before lunch? This is the
11:32:28 witness who tried to sandbag us. This is the witness we
11:32:33 deposed who knew nothing. I'm not sure. We asked him
11:32:37 about infringement: Doesn't this product infringe?

11:32:43 I'm not sure.

11:32:45 And they brought him to trial through a video feed, and suddenly he was the book of wisdom. I confronted him with his testimony. He could not explain why suddenly he got so smart? He couldn't explain why he never decided to tell us he knew more than he did.

11:33:03 Is that credible? No. The only words you should believe out of Mr. Lin's mouths -- out of Mr. Lin's mouth are the ones I got out of him in cross-examination. That's the truth. What he didn't want to admit, what the documents made him admit is the truth.

11:33:20 Go to Plaintiff's Exhibit 26-76, please, Denver, specifically the page about the RGB from the menu.

11:33:36 This is the monitor Dr. Ducharme tested. Mr. Oliver just got up and told you it doesn't infringe because this RGB scale thing is gain, they say.

11:33:49 They had an expert, Dr. Stevenson. He didn't tell you that. Who did they rely on to tell you that? Mr. Lin. When did he tell you that? Questions from their lawyers.

11:34:04 So I got up and cross-examined him again. That's 3-axis. That's what 3-axis means, RGB. And this nonsense about delta value. A delta value is upper -- the judge gave you some of that language in the Attachment A to the charge that you'll get. If it goes up by 1 or down by 1, that's a delta value. You saw it happen in court.

11:34:30 Mr. Oliver is right. I'm passionate because I'm
11:34:34 tired of seeing this multinational corporation appropriate
11:34:39 the value of something that doesn't belong to them. So,
11:34:42 yeah, I am a little passionate. Full of passion about the
11:34:45 fact that we have property rights that they won't respect,
11:34:49 despite the fact that they have barely mounted a defense to
11:34:53 infringement. Instead, they want to talk about invalidity
11:34:55 that they haven't met the burden of.
11:34:58 Oh, and you should give them 7 cents a unit
11:35:02 because my thrice-excluded expert, Mr. Brett, told you to.
11:35:10 Dr. Stevenson wasn't credible, either.
11:35:12 Can you go to ID 106, please?
11:35:16 Remember this? This is one of his noninfringement
11:35:20 opinions. They didn't bring it out on direct. He put it
11:35:23 in his report because he didn't want you, the jury, to see
11:35:26 it. He actually opined that almost -- there's no induced
11:35:31 infringement because users of monitors and projectors are
11:35:35 not sophisticated enough.
11:35:38 After we brought that out on cross, he tried to
11:35:40 rehabilitate himself and say: Well, I consider myself as
11:35:45 not sophisticated.
11:35:47 Except before he did that, he came right up here,
11:35:51 they asked him to and he manipulated the screen, showed you
11:35:55 where the menus were.
11:35:57 Now, for reasons I don't understand, he never

11:36:00 altered the values -- the color values. There's a reason
11:36:03 for that. He knew cross was coming. He could have
11:36:06 adjusted that from 50 to 51. He chose not to because he
11:36:11 knew Mr. Liddle was going to take that podium and make him
11:36:16 admit, you can adjust it one by one by one, down or up.
11:36:21 That infringes.
11:36:21 So it wasn't Dr. Stevenson. No credible witness.
11:36:26 Mr. Reed. What does Mr. Reed say? Well, he goes
11:36:33 through all the same factors he says Perdue went through,
11:36:37 and he says: The invention that ASUS spent so much time
11:36:41 marketing, featured in one of its main products, is worth
11:36:45 pennies on the dollar. They put it on their boxes. They
11:36:49 paraded those around. They put it on their marketing
11:36:52 materials. They devote facts on their website to it.
11:36:55 Pennies on the dollar? Why would you spend so much money
11:37:00 marketing it?
11:37:00 THE COURT: Mr. Bennett -- -
11:37:00 MR. BENNETT: It's not that valuable --
11:37:01 THE COURT: -- Mr. Bennett, you have two minutes.
11:37:02 MR. BENNETT: Thank you, Your Honor.
11:37:03 You wouldn't. One of my good -- one of my mentors
11:37:07 in this profession shared with me a phrase that stuck with
11:37:10 me. He said: If common sense doesn't make good sense,
11:37:14 it's nonsense. Their defenses are nonsense.
11:37:22 There was one credible witness presented to you

from ASUS. His name was Mr. Morquecho, and he was here for all of about ten minutes. They brought him up to talk about sales in other countries. And I asked him two questions.

One: Corporation uses technology that belongs someone else, they should take a license, right?

Answer: Yes, I agree with that.

Second question: If they take that technology and they use it and they don't take a license, they ought to pay for it, I asked.

Answer: Yes.

That's the answer.

We appreciate your time and attention, especially during this time, COVID, it's different. Some of you may have had some hesitation in being part of a jury. We appreciate what you've done, what you've allowed us to do, have our day and bring ASUS to account.

Answer yes to infringement; no to invalidity; 2.8 in damages. That's the reasonable amount of the value of our invention.

Thank you.

THE COURT: Thank you, Mr. Bennett.

All right. Ladies and gentlemen, that presents the -- concludes the presentation of the parties' closing arguments to you. It's now time for you to retire to the

jury room to begin your deliberations. Each of you will have a copy of the Court's instruction previously given to you and one copy of the verdict form.

The first thing you should do is to select one among your number to serve as your foreperson who will guide your deliberations in the jury room and speak for you here in the courtroom.

If you need to recess for any time during your deliberations, please follow all of the instructions that I have previously given you about your conduct during the trial.

And if at any time you need to communicate with me during your deliberations, please get a written message or question on the paper that is provided to you to the court security officer who will bring it to me and then I will respond in writing or by having you brought into the courtroom where I can address you orally.

I will always disclose to your attorneys your question and my response before I answer your question.

With those comments, it's now time to go to the jury room to begin your deliberations.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Okay. Please be seated.

Just a couple of comments. Excellent closings to

11:40:39 both of you.

11:40:40 Mr. Oliver, I'm sorry to cut you off. I offered
11:40:43 you a warning, and you declined that. And I didn't have
11:40:45 much choice about that.

11:40:47 MR. OLIVER: I understand. No offense taken. And
11:40:49 I'm sorry I even flipped ahead. I wanted to say thank you,
11:40:53 but I apologize to the Court.

11:40:55 THE COURT: That's fine.

11:40:56 Okay. Let me ask you all to stay near the
11:40:59 courthouse. Doesn't have to be the courtroom, but near the
11:41:02 courthouse and accessible by phone. If you would, both
11:41:07 sides provide your phone number to Mrs. Schroeder in case
11:41:11 we need to reach you.

11:41:13 Oftentimes there will be a note from the jury
11:41:16 looking for some document or something. And if you can get
11:41:19 back to the courthouse within ten minutes or so, that would
11:41:22 be very helpful.

11:41:23 You're welcome to pack up whatever you have, but I
11:41:26 would ask that you not take it out of the courtroom. As I
11:41:29 said, sometimes a note might require looking for an exhibit
11:41:35 or finding an exhibit, and I need for you all to be able to
11:41:38 locate that fairly quickly. So feel free to box everything
11:41:43 up. Just don't leave -- don't take it out of the courtroom
11:41:47 yet.

11:41:47 Any questions?

11:41:50 All right. We'll be in recess until we hear from
11:41:52 the jury.
11:41:53 (Recess.)
02:16:12 THE COURT: Okay. The jury has reached a verdict.
02:16:15 Anything we need to discuss before we have them brought in?
02:16:19 MR. BENNETT: After the verdict can we contact
02:16:22 jurors, Your Honor?
02:16:23 THE COURT: Here is my general policy. I -- I
02:16:26 will go back and visit with the jury afterwards, not about
02:16:30 the case, of course, or how they reached their verdict but
02:16:35 just to find out from them how our processes work, how we
02:16:40 function as a court, was there anything we did that they
02:16:44 didn't like and, you know, just sort of data points, so to
02:16:48 speak, for how we -- how we deal with the jury.
02:16:52 And then I'll tell them that they're welcome to
02:16:55 talk to you if they want to talk to you, but they're not
02:16:58 required to talk to you. It's just sort of up to them.
02:17:04 What I have -- what I will suggest to them, if you
02:17:07 guys want to sort of congregate in the lobby down there, if
02:17:15 they're going out and they are comfortable talking to you,
02:17:17 they're more than welcome to talk to you, but if they don't
02:17:21 they can wave goodbye and go on home. But I don't have any
02:17:31 prohibition against them talking to you if they want to
02:17:38 talk to you.
02:17:39 Anything else?

MR. BENNETT: No, Your Honor.

THE COURT: Okay. Let's have the jury brought in please.

(Jury in.)

THE COURT: Please be seated.

Mr. Lambeth, I understand you're our foreperson. Is that correct?

FOREPERSON: Yes, sir.

THE COURT: Has the jury reached a verdict?

FOREPERSON: We have.

THE COURT: Is the verdict unanimous?

FOREPERSON: Yes, it is.

THE COURT: I'll ask Mr. Lambeth to hand the verdict form to Mr. Richardson, who will bring it to Mrs. Schroeder, who will bring it to me.

Okay. I'm going to hand the verdict form back to Mrs. Schroeder.

Ladies and gentlemen of the jury, at this time Mrs. Schroeder is going to read the verdict form and as she does so, I want you to listen very carefully to her because when she gets to the end, I'm going to be ask you whether this is each of your verdicts, so that I can confirm that -- the unanimity of the jury.

At this time, Mrs. Schroeder will read the verdict.

02:19:30 COURT DEPUTY: Question Number 1: Has Lone Star
02:19:33 proved by a preponderance of the evidence that ASUS
02:19:36 infringed any of the following claims of U.S. Patent
02:19:39 number 6,724,435, the '435 patent?
02:19:44 Claim 1: Yes.
02:19:47 Claim 2: Yes.
02:19:51 Claim 3: Yes.
02:19:54 Claim 5: Yes.
02:19:58 Claim 6: Yes.
02:20:00 Claim 13: Yes.
02:20:02 Claim 14: Yes.
02:20:04 Claim 15: Yes.
02:20:11 COURT DEPUTY: Question Number 2: Has ASUS
02:20:14 provided by clear and convincing evidence that any of the
02:20:17 following claims of Lone Star's '435 patent are invalid?
02:20:22 Claim 1: No.
02:20:24 Claim 2: No.
02:20:29 Claim 3: No.
02:20:31 Claim 5: No.
02:20:34 Claim 6: No.
02:20:37 Claim 13: No.
02:20:39 Claim 14: No.
02:20:41 Claim 15: No.
02:20:44 What sum of money, if paid now, do you find by a
02:20:49 preponderance of the evidence would fairly and reasonably

compensate Lone Star for ASUS's infringement of the '435 patent as a one-time lump sum payment?

$825,000.

Signed and dated today.

THE COURT: All right. Thank you, Mrs. Schroeder.

Ladies and gentlemen of the jury, will all of you who voted for this verdict please stand at this time.

All right. You may be seated and let the record reflect that all eight jurors stood in response to my request to poll the jury.

The verdict is confirmed and accepted and will be filed by the clerk of the court.

Ladies and gentlemen of the jury, I told you throughout this case that you could not discuss the case with anyone, including yourselves, until the deliberations had begun. Your duty in this matter has now concluded and I'm releasing you from those obligations. Therefore, you're more than happy -- more than welcome to talk with anybody about this at any time. You're likewise just as welcome not to say another word to anybody about it. It's totally up to you and your choice.

I do have -- a practice in my court is to visit with the jurors very briefly after I've talked to a lawyers for a few moments. I want to talk to you about your experience as jurors, not to discuss the case or how you

reached the verdict you reached, but just to understand if there is anything that we can do as a public institution, as a court, to improve the juror experience.

And your having been here and served -- having served with us for a week, I think, and knowing how that experience has been for you would be very beneficial to me.

So if you would not mind waiting in the jury room for just a few minutes for me, I will be in to visit with you.

I said at the beginning of this trial on Monday that jury service is one of the most important services that you can render to your country, and I believe that more and more with each trial that I have. I think there are three good -- three pillars to great citizenship in our country. The first is answering the call of our country in a time of conflict. The second is being an informed and regular voter. And the third is being willing to serve as a juror.

You-all have demonstrated to all of us this week that aspect of good citizenship by being here and by being willing to give up your time and your energy and your effort to hearing this dispute between these parties.

So I know that the parties appreciate that, the attorneys appreciate that, and I, on behalf of the Eastern District of Texas, appreciate that as well.

We would pretty well have to shut down for business around here if we did not have people like you-all who were willing to come up here and spend a week of their lives helping us resolve matters like this and on behalf of the Eastern District of Texas I want you to know how grateful we are that you-all have been willing to serve as jurors this week.

So thank you very, very much.

At this time, Mr. Richardson will take you back to the jury room and if you will wait for a few minutes for me, I need to visit with the attorneys.

You're dismissed at this time.

COURT SECURITY OFFICER: All rise.

(Jury out.).

THE COURT: Okay. Please be seated.

Mrs. Schroeder has the verdict if anyone wishes to see it. My common practice is to ask the parties to meet and confer regarding a post-trial briefing schedule and to endeavor to do that within seven to ten days of today. So by next Friday, if you will file a notice on the docket indicating whether you have agreed to a briefing schedule for any post-trial motions and if so, what that proposed briefing schedule is.

Any questions about that from the Plaintiff?

MR. BENNETT: No, Your Honor.

02:26:08 THE COURT: Any questions from the Defendant.

02:26:10 MR. OLIVER: No questions, Your Honor. I do
02:26:13 believe there's the inoperability issue that we discussed
02:26:18 taking up at a later date.

02:26:20 THE COURT: Again, happy to handle that however
02:26:23 the parties can agree. What I would propose is you all
02:26:28 meet and confer on a post-trial briefing schedule and, once
02:26:31 you all have submitted that, if you can agree, we will --
02:26:35 we'll -- at the time we enter that order, we'll set it for
02:26:39 a hearing and unless someone believes otherwise, we can
02:26:44 deal with that at that time, either that very day or the
02:26:47 day before or something.

02:26:50 How does that sound, Mr. Oliver?

02:26:53 MR. OLIVER: That sounds good. Thank you.

02:26:56 THE COURT: Okay. Anything else? All right.
02:27:01 Congratulations again on a well-tried case and safe travels
02:27:05 to all of you.

02:27:06 MR. BENNETT: Thank you, Your Honor.

02:27:07 MR. OLIVER: Thank you, Your Honor.

02:27:08 COURT SECURITY OFFICER: All rise.

02:27:12 (WHEREUPON, these proceedings were concluded.)

COURT REPORTER'S CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

May 21, 2021 /s KATHRYN McALPINE/_____
Date KATHRYN McALPINE, RPR, CSR, CCR